

VOL 2 OF 11

No. 74851

PATRICK HENRY MURPHY, JR.

APPELLANT

CAPITAL MURDER

OFFENSE

DEATH

PUNISHMENT

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DALLAS

COUNTY

74851

REPORTER'S RECORD

VOLUME 1 OF 61 VOLUMES

TRIAL COURT CAUSE NO. F01-00328-T

STATE OF TEXAS \* IN THE DISTRICT COURT  
VS. \* DALLAS COUNTY, TEXAS  
PATRICK HENRY MURPHY, JR. \* 283RD DISTRICT COURT

\*\*\*\*\*

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**FILED IN**  
COURT OF CRIMINAL APPEALS  
MAR 9 - 2004  
Troy C. Bennett, Jr., Clerk

On the 10th day of November, 2003, the following  
proceedings came on to be heard in the above-entitled and  
numbered cause before the Honorable Vickers L. Cunningham,  
Sr., Judge Presiding, held in Dallas, Dallas County, Texas.

Proceedings reported by machine shorthand.

**ORIGINAL**

A P P E A R A N C E S

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Timothy Becher	9	10	49	36
Lawrence Bosworth	53	54	89	32
Ronna Braggs	4	5	41	20
Susan Braley	4	5		22
Virginia Brown	78	81		33
Kathie Burkhalter	98	102		16
Edward Campbell	77	79	109	35
Andrea Canady	37	38		30
Raymond Capetillo	45	47		12
Nancy Carney	155	157	193	14
Angel Chinuntdet	71	73	95	20
Antwanette Coleman	75	77		13
Michael Collins	4	5	35	13
Diane Courtney	54	55		23
Lisa Crawford	4	6	35	14

1	Elaine Crooks	22	23		35
2	Ruth Culver	54	56		19
3	Carol Cunningham	29	31	69	24
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5	Nicholas Daigle	4	5	25	37
6	Gary Danaher	58	56		21
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8	Clarence Davis	42	43		13
9	Roy Davis	95	96		14
10	Tonya Davis	85	87	123	18
11	J. Robert DeRossett	6	8	47	16
12	Jennifer Dillon	10	12		27
13	Brenda Echols	73	74		10
14	Deloris Ellis	4	5		36
15	Phillip Emery	4	6	42	9
16	Jill Ann Ervin	153	155		7
17	David Evans	104	106	134	14
18	Grace Evans	4	5	36	26
19	Virginia Farr	4	5		15
20	Kathy Fitzgerald	77	79	102	36
21	Frankie Freeland	124	126		9
22	Floyd Fuller	148	150	179	18
23	Jamie Garber	34	35	65	8
24	Dona Garrett	147	148		9
25	Rebecca Garza-Salas	4	6		10

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8	ST.44	PHOTO	51	51	40
9	ST.45	LINEUP	83	83	40
10	ST.46	POSTER OF GUNS	86	86	40
11	ST.47	POSTER OF GUNS	86	86	40
12	ST.48	POSTER OF GUNS	86	86	40
13	ST.49	PHOTO - EXPLORER	44	44	40
14	ST.50	PHOTO - EXPLORER	44	44	40
15	ST.51	PHOTO	97	97	40
16	ST.52	PHOTO	97	97	40
17	ST.53	PHOTO	97	97	40
18	ST.54	PHOTO	97	97	40
19	ST.55	PHOTO	97	97	40
20	ST.56	PHOTO	97	97	40
21	ST.57	PHOTO	97	97	40
22	ST.58	PHOTO	97	97	40
23	ST.59	VHS TAPE	121	121	40
24	ST.61	DISPATCH TAPE	123	123	40
25	ST.62	GLOCK HANDGUN	121	122	40



1	ST.65	PHOTO, APT.	46	46	41
2	ST.66	PHOTO, APT.	46	46	41
3	ST.67	DIAGRAMS, APT. HANDDRAWN	56	56	41
4	ST.68	DIAGRAMS, APT. HANDDRAWN	56	56	41
5					
6	ST.69	DIAGRAMS, APT. HANDDRAWN	56	56	41
7					
8	ST.70	DIAGRAMS, APT. HANDDRAWN	56	56	41
9	ST.71	DIAGRAMS, APT. HANDDRAWN	56	56	41
10	ST.72	DIAGRAMS, APT. HANDDRAWN	56	56	41
11					
12	ST.73	PHOTO - OSHMANS	64	64	41
13	ST.74	PHOTO - OSHMANS	64	64	41
14	ST.75	PHOTO - OSHMANS	64	64	41
15	ST.76	PHOTO - OSHMANS	64	64	41
16	ST.77	PHOTO - OSHMANS	64	64	41
17	ST.78	PHOTO - OSHMANS	64	64	41
18	ST.79	PHOTO - OSHMANS	64	64	41
19	ST.80	PHOTO - OSHMANS	64	64	41
20	ST.81	PHOTO - OSHMANS	64	64	41
21	ST.82	PHOTO - OSHMANS	64	64	41
22	ST.83	PHOTO - OSHMANS	64	64	41
23	ST.84	PHOTO - OSHMANS	64	64	41
24	ST.85	PHOTO - OSHMANS	64	64	41
25	ST.86	PHOTO - OSHMANS	64	64	41

1	ST.87	PHOTO - OSHMANS	64	64	41
2	ST.88	PHOTO - OSHMANS	64	64	41
3	ST.89	PHOTO - OSHMANS	64	64	41
4	ST.90	PHOTO - OSHMANS	64	64	41
5	ST.91	PHOTO - OSHMANS	64	64	41
6	ST.92	PHOTO - OSHMANS	64	64	41
7	ST.93	PHOTO - OSHMANS	64	64	41
8	ST.94	PHOTO - OSHMANS	64	64	41
9	ST.95	PHOTO - OSHMANS	64	64	41
10	ST.96	PHOTO - OSHMANS	64	64	41
11	ST.97	PHOTO - OSHMANS	64	64	41
12	ST.98	PHOTO - OSHMANS	64	64	41
13	ST.99	PHOTO - OSHMANS	64	64	41
14	ST.100	PHOTO - OSHMANS	64	64	41
15	ST.101	PHOTO - OSHMANS	64	64	41
16	ST.102	PHOTO - OSHMANS	64	64	41
17	ST.103	PHOTO - OSHMANS	64	64	41
18	ST.104	PHOTO - OSHMANS	64	64	41
19	ST.105	PHOTO - OSHMANS	64	64	41
20	ST.106	PHOTO - OSHMANS	64	64	41
21	ST.107	PHOTO - OSHMANS	64	64	41
22	ST.108	PHOTO - OSHMANS	64	64	41
23	ST.109	PHOTO - OSHMANS	64	64	41
24	ST.110	PHOTO - OSHMANS	64	64	41
25	ST.111	PAPERWORK, RV	64	64	41

1	ST.112	PHOTO - OSHMANS	64	64	41
2	ST.113	PHOTO - OSHMANS	64	64	41
3	ST.114	PHOTO - OSHMANS	64	64	41
4	ST.115	PHOTO - OSHMANS	64	64	41
5	ST.116	PHOTO - OSHMANS	64	64	41
6	ST.117	PHOTO - OSHMANS	64	64	41
7	ST.118	PHOTO - OSHMANS	64	64	41
8	ST.119	PHOTO - OSHMANS	64	64	41
9	ST.120	PHOTO - OSHMANS	64	64	41
10	ST.121	PHOTO - OSHMANS	64	64	41
11	ST.122	PHOTO - OSHMANS	64	64	41
12	ST.123	PHOTO - OSHMANS	64	64	41
13	ST.124	PHOTO - OSHMANS	64	64	41
14	ST.125	PHOTO - OSHMANS	64	64	41
15	ST.126	PHOTO - OSHMANS	64	64	41
16	ST.127	PHOTO - OSHMANS	64	64	41
17	ST.128	PHOTO - OSHMANS	64	64	41
18	ST.129	PHOTO - OSHMANS	64	64	41
19	ST.130	PHOTO - OSHMANS	64	64	41
20	ST.131	PHOTO - OSHMANS	64	64	41
21	ST.132	PHOTO - OSHMANS	64	64	41
22	ST.133	PHOTO - OSHMANS	64	64	41
23	ST.134	PHOTO - OSHMANS	64	64	41
24	ST.135	PHOTO - OSHMANS	64	64	41
25	ST.136	PHOTO - OSHMANS	64	64	41

1	ST.137	PHOTO - OSHMANS	64	64	41
2	ST.138	PHOTO - OSHMANS	64	64	41
3	ST.139	PHOTO - OSHMANS	64	64	41
4	ST.140	PHOTO - OSHMANS	64	64	41
5	ST.141	PHOTO - OSHMANS	64	64	41
6	ST.142	PHOTO - OSHMANS	64	64	41
7	ST.143	PHOTO - OSHMANS	64	64	41
8	ST.144	PHOTO - OSHMANS	64	64	41
9	ST.145	PHOTO - OSHMANS	64	64	41
10	ST.146	PHOTO - OSHMANS	64	64	41
11	ST.147	PHOTO - OSHMANS	64	64	41
12	ST.148	PHOTO - OSHMANS	64	64	41
13	ST.149	PHOTO - OSHMANS	64	64	41
14	ST.150	PHOTO - OSHMANS	64	64	41
15	ST.151	PHOTO - OSHMANS	64	64	41
16	ST.152	PHOTO - OSHMANS	64	64	41
17	ST.153	PHOTO - OSHMANS	64	64	41
18	ST.154	PHOTO - OSHMANS	64	64	41
19	ST.155	PHOTO - OSHMANS	64	64	41
20	ST.156	PHOTO - OSHMANS	64	64	41
21	ST.157	PHOTO - OSHMANS	64	64	41
22	ST.158	PHOTO - OSHMANS	64	64	41
23	ST.159	PHOTO - OSHMANS	64	64	41
24	ST.160	PHOTO - OSHMANS	64	64	41
25	ST.161	PHOTO - OSHMANS	64	64	41

1	ST.162	PHOTO - OSHMANS	64	64	41
2	ST.163	PHOTO - OSHMANS	64	64	41
3	ST.164	PHOTO - OSHMANS	64	64	41
4	ST.165	PHOTO - OSHMANS	64	64	41
5	ST.166	PHOTO - OSHMANS	64	64	41
6	ST.167	PHOTO - OSHMANS	64	64	41
7	ST.168	PHOTO - OSHMANS	64	64	41
8	ST.169	PHOTO - OSHMANS	64	64	41
9	ST.170	PHOTO - OSHMANS	64	64	41
10	ST.171	PHOTO - OSHMANS	64	64	41
11	ST.172	PHOTO - OSHMANS	64	64	41
12	ST.173	DIAGRAM, CRIME SCENE	65	65	41
13	ST.174	OSHMANS VIDEOTAPE	70	70	41
14	ST.174-B	COPY OF OSHMANS VIDEOTAPE	70	70	41
15					
16	ST.175	HAWKINS' BELT	89	89	41
17	ST.176	HAWKINS' RADIO	89	89	41
18	ST.177	HAWKINS' MAGAZINE CARRIER	89	89	41
19					
20	ST.178	REVOLVER	76	77	41
21	ST.179	RADIO	87	87	41
22	ST.180	SCREWDRIVER	118	119	41
23	ST.182	FRAGMENTS	110	110	41
24	ST.183	SHELL CASINGS	112	112	41
25	ST.184	PACKAGE	113	113	41
26	ST.184	FRAGMENTS	113	113	41

1	A-B				
2	ST.185	PACKAGE	116	116	41
3	ST.185	BOTTLES, FRAGMENTS	116	116	41
4	A-D				
5	ST.186	PACKAGE	117	117	41
6	ST.186	FRAGMENTS	117	117	41
7	A-C				
8	ST.187	MAGNET POSTER	76	77	41
9	ST.188	PHOTO	93	93	42
10	ST.189	PHOTO	93	93	42
11	ST.192	PHOTO	8	8	42
12	ST.193	AUTOPSY PHOTO	8	8	42
13	ST.194	AUTOPSY PHOTO	8	8	42
14	ST.195	AUTOPSY PHOTO	8	8	42
15	ST.196	AUTOPSY PHOTO	8	8	42
16	ST.197	AUTOPSY PHOTO	8	8	42
17	ST.198	AUTOPSY PHOTO	8	8	42
18	ST.199	AUTOPSY PHOTO	8	8	42
19	ST.201	AUTOPSY PHOTO	8	8	42
20	ST.202	AUTOPSY PHOTO	8	8	42
21	ST.203	AUTOPSY PHOTO	8	8	42
22	ST.204	AUTOPSY PHOTO	8	8	42
23	ST.205	AUTOPSY PHOTO	8	8	42
24	ST.206	AUTOPSY PHOTO	8	8	42
25	ST.207	AUTOPSY PHOTO	8	8	42
	ST.208	AUTOPSY PHOTO	8	8	42

1	ST.209	MANNEQUIN	9	9	42
2	ST.210	FRAGMENTS	32	32	42
3	ST.211	FRAGMENTS	32	32	42
4	ST.212	FRAGMENTS	32	32	42
5	ST.213	FRAGMENTS	32	32	42
6	ST.214	FRAGMENTS	32	32	42
7	ST.215	FRAGMENTS	32	32	42
8	ST.216	FRAGMENTS	32	32	42
9	ST.217	FRAGMENTS	32	32	42
10	ST.218	FRAGMENTS	32	32	42
11	ST.219	FRAGMENTS	32	32	42
12	ST.220	FRAGMENTS	32	32	42
13	ST.221	PHOTO, LEATHER	66	66	42
14	ST.222	PHOTO, LEATHER DEFECT	66	66	42
15	ST.223	PHOTO BELT DEFECT	66	66	42
16	ST.224	PHOTO, CLIP	66	66	42
17	ST.225	PHOTO, BOOTS	66	66	42
18	ST.226	PHOTO, BOOTS	66	66	42
19	ST.227	PHOTO, VEST	66	66	42
20	ST.228	PHOTO, VEST	66	66	42
21	ST.229	PHOTO, VEST	66	66	42
22	ST.230	PHOTO, VEST DEFECT	66	66	42
23					
24	ST.231	PHOTO, VEST DEFECT	66	66	42
25	ST.232	PHOTO, VEST	66	66	42

1	ST.233	PHOTO, VEST	66	66	42
2	ST.234	PHOTO, VEST	66	66	42
3	ST.235	PHOTO, CLOTHES	66	66	42
4	ST.236	PHOTO, CLOTHES	66	66	42
5	ST.237	PHOTO, CLOTHES	66	66	42
6	ST.240	VEST	77	77	42
7	ST.241	PHOTO, OSHMANS, VEHICLE	35	35	42
8	ST.242	PHOTO, OSHMANS, VEHICLE	35	35	42
9	ST.243	PHOTO, OSHMANS, VEHICLE	35	35	42
10	ST.244	PHOTO, OSHMANS, VEHICLE	35	35	42
11	ST.245	PHOTO, OSHMANS, VEHICLE	35	35	42
12	ST.246	PHOTO, OSHMANS, VEHICLE	35	35	42
13	ST.247	PHOTO, OSHMANS, VEHICLE	35	35	42
14	ST.248	DIAGRAM	35	35	42
15	ST.249	DIAGRAM	35	35	42
16	ST.250	DIAGRAM	35	35	42
17	ST.251	DIAGRAM	35	35	42
18	ST.252	DIAGRAM	35	35	42
19	ST.253	DIAGRAM	35	35	42
20	ST.254	DIAGRAM	35	35	42
21	ST.255	DIAGRAM	35	35	42



1	ST.256	DIAGRAM	35	35	42
2	ST.257	DIAGRAM	35	35	42
3	ST.258	DIAGRAM	45	45	42
4	ST.259	DIAGRAM	86	86	42
5	ST.260	POSTER	86	86	42
6	ST.261	PHOTO	110	110	42
7	ST.262	PHOTO	110	110	42
8	ST.263	PHOTO	110	110	42
9	ST.264	PHOTO	110	110	42
10	ST.265	DRAWING	110	110	42
11	ST.266	PHOTO, RV PARK	110	110	42
12	ST.267	PHOTO, RV PARK	110	110	42
13	ST.268	PHOTO	120	120	42
14	ST.269	PHOTO, AERIAL OF COACHLIGHT AREA	120	120	42
15	ST.270	PHOTO, ARIEL	120	120	42
16	ST.271	PHOTO, AERIAL OF COACHLIGHT AREA	120	120	42
17					
18	ST.272	PHOTO, RV PARK	120	120	42
19	ST.273	PHOTO, RV PARK	120	120	42
20	ST.274	PHOTO, VEHICLE	120	120	42
21	ST.275	PHOTO, RV PARK	120	120	42
22	ST.276	PHOTO, RV PARK	120	120	42
23	ST.277	PHOTO, RV PARK	120	120	42
24	ST.278	PHOTO, RV PARK	120	120	42
25	ST.279	PHOTO, RV PARK	120	120	42

1	ST.280	PHOTO, RV PARK	120	120	42
2	ST.281	PHOTO, RV PARK	120	120	42
3	ST.282	DIAGRAM	120	120	42
	ST.284	RUGER PISTOL	143	143	42
4	ST.285	BERRETTA GUN	143	143	42
5	ST.286	WALLET	143	143	42
6	ST.287	POSTER OF GUNS	143	143	42
7	ST.288-A	HANDGUN	154	154	42
8	ST.289	HANDGUN	154	154	42
9	ST.290	HANDGUN	154	154	42
10	ST.291	HANDGUN	154	154	42
11	ST.292	HANDGUN	154	154	42
12	ST.293	HANDGUN	154	154	42
13	ST.294	HANDGUN	154	154	42
14	ST.295	HANDGUN	154	154	42
15	ST.296	HANDGUN	154	154	42
16	ST.297	HANDGUN	154	154	42
17	ST.298	HANDGUN	154	154	42
18	ST.299	HANDGUN	154	154	42
19	ST.300	HANDGUN	154	154	42
20	ST.301	HANDGUN	171	171	42
21	ST.302	HANDGUN	171	171	42
22	ST.303	HANDGUN	171	171	42
23	ST.304	HANDGUN	171	171	42
24	ST.305	HANDGUN	171	171	42

25

1	ST.306	HANDGUN	171	171	42
2	ST.307	HANDGUN	171	171	42
3	ST.308	HANDGUN	171	171	42
4	ST.309	HANDGUN	171	171	42
5	ST.310	HANDGUN	171	171	42
6	ST.311	SHOTGUN	161	161	42
7	ST.312	RIFLE	161	161	42
8	ST.313	SHOTGUN	161	161	42
9	ST.314	RIFLE	161	161	42
10	ST.315	SHOTGUN	161	161	42
11	ST.316	SHOTGUN	161	161	42
12	ST.317	RIFLE	161	161	42
13	ST.318	RIFLE	161	161	42
14	ST.319	SHOTGUN	157	157	42
15	ST.320	HANDGUN	187	187	42
16	ST.324	REVOLVER FRAMES	192	192	42
17	ST.325	REVOLVER FRAMES	192	192	42
18	ST.326	REVOLVER FRAMES	192	192	42
19	ST.327	REVOLVER FRAMES	192	192	42
20	ST.328	REVOLVER FRAMES	192	192	42
21	ST.329	REVOLVER FRAMES	192	192	42
22	ST.330	REVOLVER FRAMES	192	192	42
23	ST.331	REVOLVER FRAMES	192	192	42
24	ST.332	REVOLVER FRAMES	192	192	42
25	ST.333	REVOLVER FRAMES	192	192	42

1	ST.334	ITEM FROM JEEP	182	183 (REC)	42
2	ST.335	RADIO	168	168	42
3	ST.336	RECEIPTS, RV	182	183 (REC)	42
4	ST.337	SCANNER	168	168	42
5	ST.338	SCANNER	182	183 (REC)	42
6	ST.339	WALKIE-TALKIE	168	168	42
7	ST.341	SMOKE GRENADE AND LIGHTER	168	168	42
8	ST.341-A	FREQUENCY GUIDE	166	166	42
9	ST.341-B	ITEM FROM RV	168	168	42
10	ST.342	CAP	168	168	42
11	ST.342-A	SPEC WAR	78	78	48
12	ST.343-A	PURSE	80	81	46
13	ST.344	CONTENTS, TORN PICTURES	182 79	183 (REC) 79	42 46
14	ST.344-A	SPEC WAR	78	78	48
15	ST.345	PKG. INSURANCE PAPERS	182 80	183 (REC) 80	42 46
16	ST.346	BANDOLIER	167	167	42
17	ST.347	RADIO	168	168	42
18	ST.348	PAPERWORK, JEEP	177	183	42
19	ST.349	CLIPS, AMMO	177	183	42
20	ST.350	FANNY PACK	177	183	42
21	ST.351	PAPERWORK, JEEP	177	183	42
22	ST.352	HOLSTER	177	183	42
23	ST.353	HOLSTER, CLIP	177	183	42

1	ST.354	ITEMS	177	183	42
2	ST.355	CLIPS, AMMO BACKPACK	177	183	42
3	ST.356	BAG OF AMMO	177	183	42
4	ST.358	CONTENTS OF PKG.	177	183	42
5	ST.359	HOLSTER	177	183	42
6	ST.359-A	NIGHT VISION SCOPE	177	183	42
7	ST.363	BANDOLIER	177	183	42
8	ST.364	PHOTO, RV	177	183	42
9	ST.364-A	PHOTO	177	183	42
10	ST.365	PHOTO - RV PARK	177	183	42
11	ST.365-A	PHOTO	177	183	42
12	ST.366	PHOTO, RV&EVIDENCE	177	183	42
13	ST.367	PHOTO, RV&EVIDENCE	177	183	42
14	ST.368	PHOTO, RV&EVIDENCE	177	183	42
15	ST.369	PHOTO, RV&EVIDENCE	177	183	42
16	ST.370	PHOTO, RV&EVIDENCE	177	183	42
17	ST.371	PHOTO, RV&EVIDENCE	177	183	42
18	ST.372	PHOTO, RV&EVIDENCE	177	183	42
19	ST.373	PHOTO, RV&EVIDENCE	177	183	42
20	ST.374	PHOTO, RV&EVIDENCE	177	183	42
21	ST.375	PHOTO, RV&EVIDENCE	177	183	42
22	ST.376	PHOTO, RV&EVIDENCE	177	183	42
23	ST.377	PHOTO, RV&EVIDENCE	177	183	42
24	ST.378	PHOTO, RV&EVIDENCE	177	183	42
25	ST.379	PHOTO, RV&EVIDENCE	177	183	42

1	ST.380	PHOTO, RV&EVIDENCE	177	183	42
2	ST.381	PHOTO, RV&EVIDENCE	177	183	42
3	ST.382	PHOTO, RV&EVIDENCE	177	183	42
4	ST.383	PHOTO, RV&EVIDENCE	177	183	42
5	ST.384	PHOTO, RV&EVIDENCE	177	183	42
6	ST.385	PHOTO, RV&EVIDENCE	177	183	42
7	ST.386	PHOTO, RV&EVIDENCE	177	183	42
8	ST.387	PHOTO, RV&EVIDENCE	177	183	42
9	ST.388	PHOTO, RV&EVIDENCE	177	183	42
10	ST.389	PHOTO, RV&EVIDENCE	177	183	42
11	ST.390	PHOTO, RV&EVIDENCE	177	183	42
12	ST.391	PHOTO, RV&EVIDENCE	177	183	42
13	ST.392	PHOTO, RV&EVIDENCE	177	183	42
14	ST.393	PHOTO, RV&EVIDENCE	177	183	42
15	ST.394	PHOTO, RV&EVIDENCE	177	183	42
16	ST.395	PHOTO, RV&EVIDENCE	177	183	42
17	ST.396	PHOTO, RV&EVIDENCE	177	183	42
18	ST.397	PHOTO, RV&EVIDENCE	177	183	42
19	ST.398	PHOTO, RV&EVIDENCE	177	183	42
20	ST.399	PHOTO, RV&EVIDENCE	177	183	42
21	ST.400	PHOTO, RV&EVIDENCE	177	183	42
22	ST.401	PHOTO, RV&EVIDENCE	177	183	42
23	ST.402	PHOTO, RV&EVIDENCE	177	183	42
24	ST.403	PHOTO, RV&EVIDENCE	177	183	42
25	ST.404	PHOTO, RV&EVIDENCE	177	183	42

1	ST.405	PHOTO, RV&EVIDENCE	177	183	42
2	ST.406	PHOTO, RV&EVIDENCE	177	183	42
3	ST.407	PHOTO, RV&EVIDENCE	177	183	42
4	ST.408	PHOTO, RV&EVIDENCE	177	183	42
5	ST.409	PHOTO, RV&EVIDENCE	177	183	42
6	ST.410	PHOTO, RV&EVIDENCE	177	183	42
7	ST.411	PHOTO, RV&EVIDENCE	177	183	42
8	ST.412	PHOTO, RV&EVIDENCE	177	183	42
9	ST.413	PHOTO, RV&EVIDENCE	177	183	42
10	ST.414	PHOTO, RV&EVIDENCE	177	183	42
11	ST.415	PHOTO, RV&EVIDENCE	177	183	42
12	ST.416	PHOTO, RV&EVIDENCE	177	183	42
13	ST.417	PHOTO, RV&EVIDENCE	177	183	42
14	ST.418	PHOTO, RV&EVIDENCE	177	183	42
15	ST.419	PHOTO, RV&EVIDENCE	177	183	42
16	ST.420	PHOTO, RV&EVIDENCE	177	183	42
17	ST.421	PHOTO, RV&EVIDENCE	177	183	42
18	ST.422	PHOTO, RV&EVIDENCE	177	183	42
19	ST.423	PHOTO, RV&EVIDENCE	177	183	42
20	ST.424	PHOTO, RV&EVIDENCE	177	183	42
21	ST.425	PHOTO, RV&EVIDENCE	177	183	42
22	ST.426	PHOTO, RV&EVIDENCE	177	183	42
23	ST.427	PHOTO, RV&EVIDENCE	177	183	42
24	ST.428	PHOTO, RV&EVIDENCE	177	183	42
25	ST.429	PHOTO, RV&EVIDENCE	177	183	42

1	ST.430	PHOTO, RV&EVIDENCE	177	183	42
2	ST.431	PHOTO, RV&EVIDENCE	177	183	42
3	ST.432	PHOTO, RV&EVIDENCE	177	183	42
4	ST.433	PHOTO, RV&EVIDENCE	177	183	42
5	ST.434	PHOTO, RV&EVIDENCE	177	183	42
6	ST.435	PHOTO, RV&EVIDENCE	177	183	42
7	ST.436	PHOTO, RV&EVIDENCE	177	183	42
8	ST.437	PHOTO, RV&EVIDENCE	177	183	42
9	ST.438	PHOTO, RV&EVIDENCE	177	183	42
10	ST.439	PHOTO, RV&EVIDENCE	177	183	42
11	ST.440	PHOTO, RV&EVIDENCE	177	183	42
12	ST.441	PHOTO, RV&EVIDENCE	177	183	42
13	ST.442	PHOTO, RV&EVIDENCE	177	183	42
14	ST.443	PHOTO, RV&EVIDENCE	177	183	42
15	ST.444	PHOTO, RV&EVIDENCE	177	183	42
16	ST.445	PHOTO, RV&EVIDENCE	177	183	42
17	ST.446	PHOTO, RV&EVIDENCE	177	183	42
18	ST.447	PHOTO, RV&EVIDENCE	177	183	42
19	ST.448	PHOTO, RV&EVIDENCE	177	183	42
20	ST.449	PHOTO, RV&EVIDENCE	177	183	42
21	ST.450	PHOTO, RV&EVIDENCE	177	183	42
22	ST.451	PHOTO, RV&EVIDENCE	177	183	42
23	ST.452	PHOTO, RV&EVIDENCE	177	183	42
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13	ST.516	PHOTO	112	112	45
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22	ST.525	PHOTO	112	112	45
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1 STATE OF TEXAS \*

2 COUNTY OF DALLAS \*

3 I, NANCY BREWER, Official Court Reporter for the 283rd  
4 Judicial District Court, do hereby certify that the above  
5 and foregoing constitutes a true and correct transcription  
6 of all portions of evidence and other proceedings requested  
7 in writing by counsel for the parties to be included in this  
8 volume of the Reporter's Record, in the above-styled and  
9 numbered cause, all of which occurred in open court or in  
10 chambers and were reported by me.

11 WITNESS MY OFFICIAL HAND on this the 4 day of

12 March, 2004.

13  
14  
15 Nancy Brewer  
16 NANCY BREWER, CSR, NO. 5759  
17 Expiration Date: 12-31-04  
18 Official Reporter, 283rd JDC  
19 Frank Crowley Crts. Bldg. LB33  
20 133 No. Industrial Blvd.  
21 Dallas, TX 75207  
22 (214) 653-5863  
23  
24  
25

REPORTER'S RECORD

**ORIGINAL**

VOLUME 2 OF 61

FEBRUARY 2, 2001

Trial Court Cause No. F01-34008-T

(later refiled as F01-00327-T)

74851

THE STATE OF TEXAS \* IN THE 283RD JUDICIAL  
VS. \* DISTRICT COURT OF  
PATRICK MURPHY \* DALLAS COUNTY, TEXAS

OTHER CAUSE NUMBERS AND DEFENDANTS:

F01-34005-T (later refiled as F01-00323-T) George Rivas

F01-34004-T (later refiled as F01-00324-T) Donald Newbury

F01-34006-T (later refiled as F01-00326-T) Michael Rodriguez

F01-34007-T (later refiled as F01-00325-T) Joseph Garcia

F01-34010-T (later refiled as F01-00327-T) Randy E. Halprin

(APPEARANCES ON FOLLOWING PAGE)

**FILED IN**  
COURT OF CRIMINAL APPEALS

MAR 9 - 2004

Troy C. Bennett, Jr., Clerk

On the 2nd day of February, 2001, the above  
entitled and numbered causes came on to be heard in the said  
Court, Honorable Molly Francis, Judge Presiding, and the  
following proceedings were held, to-wit:

A P P E A R A N C E S

MR. WILLIAM HILL  
SBOT NO.

Dallas County District Attorney  
MR. TOBY SHOOK

SBOT No.  
MR. GEORGE WEST

SBOT No.  
MR. RICK JACKSON

SBOT No.  
Assistant District Attorneys

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214-653-3700  
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Attorney at Law  
SBOT NO.

MR. ADAM SEIDEL  
Attorney at Law  
SBOT NO.

MS. MICHELLE MOORE  
Attorney at Law  
SBOT NO.

MR. KERRY YOUNG -- Chief Staff Attorney for the Dallas  
County Criminal Court Judges  
OTHER CAUSE NOS. & APPEARANCES:

F01-34004-T	Donald Newbury	Mr. Kevin Brooks
-------------	----------------	------------------

F01-34006-T	Michael A. Rodriguez	Mr. Jim Oatman
-------------	----------------------	----------------

		Mr. Richard Carrizales
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F01-34007-T	Joseph C. Garcia	Mr. Paul Brauchle
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F01-34008-T	Patrick Murphy, Jr.	Ms. Brook Busbee
-------------	---------------------	------------------

		Mr. Juan Sanchez
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F01-34010-T	Randy Ethan Halprin	Mr. George Ashford
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		Mr. Ed King
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1 P R O C E E D I N G S

2 February 2, 2001

3 THE COURT: These are Cause Numbers

4 F01-34005-T, styled the State of Texas versus George Rivas.

5 F01-34004-T, styled the State of Texas versus Donald Keith

6 Newbury. F01-34007-T, styled the State of Texas versus Joseph

7 C. Garcia. F01-34008-T, styled the State of Texas versus

8 Patrick Henry Murphy, Jr. F01-34010-T, styled the State of

9 Texas versus Randy Ethan Halprin. F01-34006-T, styled the

10 State of Texas versus Michael Anthony Rodriguez.

11 I believe representing the State, I have here  
12 today for purposes of the record, let's just put on, I have  
13 District Attorney Bill Hill, Assistant District Attorney Toby  
14 Shook, George West, Rick Jackson.

15 MR. HILL: That's correct, Your Honor.

16 THE COURT: All right. Representing the  
17 defense, and let me just first state for the record that the  
18 only -- the only one of the above six defendants that I  
19 actually have in court today and is actually in Dallas County  
20 at this point is Mr. George Rivas. The other five defendants  
21 are still in Colorado pending extradition hearings. They have  
22 had attorneys that have been appointed here in Dallas County,  
23 and I believe that each of the nonpresent defendants have  
24 attorneys here today, at least one.

25 Let me go through the list and at least for

1 purposes of the record let me get each attorney to state  
2 present if you're here. This is going to sound a little bit  
3 like roll call, but since I need to know this for purposes of  
4 the record who is here representing the interests of these  
5 individuals, let's go ahead and do that.

6 For Mr. Rivas, I do have Mr. Wayne Huff present,  
7 Mr. Karo Johnson, Mr. Adam Seidel and Ms. Michelle Moore is  
8 assisting. Donald Keith Newbury, his appointed attorneys are  
9 Doug Parks, who I believe is not here. Kevin Brooks.

10 MR. BROOKS: Present.

11 THE COURT: Co-counsel. Joseph Garcia, attorney  
12 Hugh Lucas, who I believe is not here. Co-counsel, Paul  
13 Brauchle.

14 MR. BRAUCHLE: Here.

15 THE COURT: Patrick Henry Murphy, Jr., lead  
16 counsel Brook Busbee, who is here.

17 MS. BUSBEE: Yes.

18 THE COURT: And Juan Sanchez.

19 MR. SANCHEZ: Present.

20 THE COURT: Also here. Randy Ethan Halprin,  
21 George Ashford, lead counsel.

22 MR. ASHFORD: Yes.

23 THE COURT: Co-counsel, Ed King.

24 MR. KING: Present, Your Honor.

25 THE COURT: Michael Anthony Rodriguez, Jim

1 Oatman.

2 MR. OATMAN: Present.

3 THE COURT: And Richard Carrizales.

4 MR. CARRIZALES: Present.

5 THE COURT: Okay. The chief staff attorney for  
6 the Dallas County criminal court judges, Kerry Young, who is  
7 also here, was asked to notify members of the media of my  
8 intent to hold this hearing today and my intent to allow any  
9 attorneys who are here representing various media agencies to  
10 make statements, should they choose to, remarks about my  
11 concerns over pretrial publicity and the effect of this  
12 pretrial publicity on my ability to impanel a fair and  
13 impartial jury. Obviously, you have been asked to come today  
14 to participate and, of course, to report anything that goes on  
15 here today.

16 Of the six defendants, let me just say, and  
17 anybody who disagrees with my recollection of what has gone on  
18 here up until this point, of the six defendants in this case, I  
19 believe five have made statements to the media regarding  
20 certain levels of involvement in this particular case regarding  
21 their beliefs as to their guilt or innocence and even  
22 statements regarding what should happen to them back in Dallas  
23 County upon trial.

24 You are here today and have been asked to come  
25 today because I believe I have as a responsibility of the Judge

1 who is going to try these six cases to ensure that I am able to  
2 select a fair and impartial jury, and I believe we are going to  
3 begin, since I have Mr. Rivas here in Dallas County, we will  
4 begin jury selection as early as June in that particular case.

5           These juries that we impanel, these groups of  
6 people that we bring up to the courthouse to make decisions in  
7 these cases will, of course, be required to base their verdicts  
8 on what they hear in the courtroom and on the evidence they  
9 hear presented by the State and by the defense, should there be  
10 any. And of course, they will be required to disregard any and  
11 all pretrial remarks or pretrial recordings that they hear,  
12 including statements that are made by Mr. Rivas or purported to  
13 have been made by Mr. Rivas or Mr. Halprin -- I believe Mr.  
14 Halprin was on last night -- and will be required to disregard  
15 statements made by these individuals unless they are properly  
16 admitted during the trial. And in that regard, they can, of  
17 course, consider them for whatever purpose they choose. But  
18 they must be able to base their verdict on what they hear in  
19 the courtroom and not on extraditial (sic) unsworn statements  
20 made by participants of these trials.

21           The six defendants, of course, each of them has  
22 the right to come in on their trial date and enter pleas of not  
23 guilty. Regardless of what they have said to the media or  
24 purported to have said to a reporter about being guilty, they  
25 have the right to have a Dallas County jury base their verdict

1 on what is presented in the courtroom. They have the right if  
2 they are found guilty of capital murder then to have a jury  
3 decide what punishment is appropriate. And remarks that they  
4 make regarding what they feel is appropriate and should happen  
5 to them if they are found guilty are to be -- are to not be  
6 considered unless those remarks are introduced during the trial  
7 itself.

8 Over the past week, I believe I have even heard  
9 an expert witness testify that after hearing an audio recording  
10 of Mr. Rivas' voice, he could tell based on that audio  
11 recording whether or not Mr. Rivas was lying. And of course, I  
12 believe he said that he was. So these continued reports, of  
13 course, affect the people that listen to them in Dallas County,  
14 and I am concerned about the 72 people who are ultimately going  
15 to be making the decision in each of these six cases, concerned  
16 about their ability to base their verdict on what they hear in  
17 the courtroom and not on what they hear reported in the news.

18 Now, let me make it very clear that if I do  
19 impose an order restricting publicity on behalf of the  
20 participants in each of these six cases, and that will include,  
21 of course, attorneys, witnesses, potential witnesses, any  
22 representatives of either side, investigators, co-counsel, of  
23 course. Any other experts that are employed by either side,  
24 they will fall under this rule. But my order will be directed  
25 to them, not to the news media. So this is directed to the

1 trial participants and will include the five defendants who are  
2 still in Colorado and any remarks that they may say.

3 Okay. I would be glad to hear anything from  
4 anybody here who is an attorney who has something they would  
5 like to say regarding my intent to make these restrictions.  
6 Any remarks from the State?

7 MR. HILL: Your Honor, we have no objections to  
8 your proposed order.

9 THE COURT: Defense? Any defendant? Mr. Huff,  
10 let's start with you.

11 MR. HUFF: We have no remarks, Your Honor.

12 THE COURT: All right. Mr. Brooks for Donald  
13 Keith Newbury.

14 MR. BROOKS: No objection, Your Honor.

15 THE COURT: All right. Mr. Brauchle for Joseph  
16 Garcia.

17 MR. BRAUCHLE: We have no objection, Your Honor.

18 THE COURT: Ms. Busbee for Patrick Murphy.

19 MS. BUSBEE: No objection, Your Honor.

20 THE COURT: Mr. Ashford for Randy Ethan Halprin.

21 MR. ASHFORD: No objections, Your Honor.

22 THE COURT: All right. Michael Anthony  
23 Rodriguez, Jim Oatman.

24 MR. OATMAN: No objection, Your Honor.

25 THE COURT: Okay. State, defense, members of



1 the media, anybody like to say anything? This is your chance.

2 MS. DEBRA THOMAS: Your Honor, I am Debra Thomas  
3 from Haynes & Boone.

4 THE COURT: Yes, ma'am.

5 MS. DEBRA THOMAS: I represent the Fort Worth  
6 Star Telegram. While we are sensitive to the Court's concerns  
7 about a fair and impartial jury, we are also sensitive to the  
8 first amendment and the Texas constitutional rights afforded  
9 the defendants in this matter, and we would request the  
10 opportunity to brief the Court on our views of the law in this  
11 matter in this regard and would appreciate any opportunity to  
12 address our objections and concerns with the Court.

13 THE COURT: Okay. Thank you very much. Anybody  
14 else? A lot of people looking down all of a sudden. Come on,  
15 this is your chance.

16 Is that it? Anybody else have anything they  
17 want to say? All right. As it relates to -- as it relates to  
18 briefings and any authority you would like me to look at, I  
19 would be glad to consider that. However, I am going to find at  
20 this point that any further extrajudicial statements made by  
21 the trial participants on both sides are reasonably likely to  
22 prejudice the proceedings in this court.

23 I find that there is a clear or serious threat  
24 to the fairness of the trial. I find that less restrictive  
25 alternatives are not adequate to mitigate the harm caused by

1 the publicity, and that this order would effectively prevent  
2 the threatened danger.

3 I am issuing this order restricting parties,  
4 attorneys and witnesses from making any further extrajudicial  
5 statements or furnishing any information to members of the  
6 media that might reasonably be expected to pose a serious  
7 threat to the constitutional guarantees of a fair trial or  
8 impair the Court's ability to impanel an impartial jury.

9 Let me say for the purposes of the record that a  
10 witness is someone who has been sworn in by the Court or anyone  
11 that an attorney for the State or the defense believes in good  
12 faith has information material to the trial of these cases and  
13 the person has been notified of that fact and of the existence  
14 of this order.

15 Any witness or potential witness shall be  
16 notified of this order whether they be in Texas, Colorado or  
17 elsewhere. I find that these restrictions on pretrial  
18 publicity are necessary to preserve the availability of the  
19 option of change of venue, and there is no indication that  
20 delaying the trial of this case or the other five defendants  
21 would lessen the amount of pretrial publicity in these cases.

22 I do not restrict the publication or broadcasting  
23 by members of the press or news media any information not  
24 prohibited by law. This order does not prohibit access by the  
25 media to public records or documents. A witness, prospective

1 witness, defendant, law enforcement officer, attorney or other  
2 person subject to this order is not prohibited by this order  
3 from making out of court statements, reciting without comment  
4 information contained in public records, scheduling or the  
5 result of any hearing or the general nature of the proceedings.

6 Obviously, I am equally concerned about free  
7 speech but believe that when you have free speech rights and  
8 the right to a fair trial that conflict, that the right to a  
9 fair trial is going to prevail. I will issue an order this  
10 afternoon. I will be glad to revisit the issue any time I am  
11 presented any authority to review, and you never know, may  
12 change my mind. I will also issue findings in this regard.  
13 Thank y'all very much.

14 Sheriff, he can go back.

15 (End of proceedings)  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 STATE OF TEXAS )

2 COUNTY OF DALLAS )

3 I, SHARON HAZLEWOOD, deputy court reporter in  
4 and for the 283rd Judicial District Court of Dallas County,  
5 State of Texas, do hereby certify that the above and foregoing  
6 contains a true and correct transcription of all portions of  
7 evidence and other proceedings requested in writing by counsel  
8 for the parties to be included in the reporter's record in the  
9 above styled and numbered cause, all of which occurred in open  
10 court or in chambers and were reported by me.

11 I further certify that this transcription of the  
12 proceedings truly and correctly reflects the exhibits, if any,  
13 offered by the respective parties.

14 I further certify that Dallas County did not pay  
15 a substitute court reporter while I prepared this transcript.

16 WITNESS my hand, the 24th day of July, 2003.

17 Sharon Hazlewood

18 SHARON HAZLEWOOD, C.S.R.

19 Certification Number: 628

20 Date of Expiration: 12-31-2004

21 283RD JUDICIAL DISTRICT COURT

22 Frank Crowley Courts Building

23 133 N. Industrial, LB33

24 Dallas, Texas 75207-4313

25 214/653-5674

74851

REPORTER'S RECORD

**ORIGINAL**

VOLUME 3 OF 61

FEBRUARY 23, 2001

Court Trial Cause Number F01-34008-T

(later filed as F01-00328-T)

THE STATE OF TEXAS

IN THE 283RD JUDICIAL

VS.

DISTRICT COURT OF

PATRICK MURPHY, JR.

DALLAS COUNTY, TEXAS

OTHER CAUSE NUMBERS AND DEFENDANTS:

F01-34004-T (later refiled as F01-00323-T) George Rivas

F01-34004-T (later refiled as F01-00324-T) Donald Newbury

F01-34006-T (later refiled as F01-00326-T) Michael Rodriguez

F01-34008-T (later refiled as F01-00328-T) Patrick Murphy, Jr.

F01-34007-T (later refiled as F01-00325-T) Joseph Garcia

F01-34010-T (later refiled as F01-00327-T) Randy Halprin

-----

**FILED IN**  
COURT OF CRIMINAL APPEALS

MAR 9 - 2004

(APPEARANCES ON FOLLOWING PAGE)

Troy C. Bennett, Jr., Clerk

On the 23rd day of February, 2001, the above  
entitled and numbered cause came on to be heard in the said  
Court, Honorable Molly Francis, Judge Presiding, and the  
following proceedings were held, to-wit:

A P P E A R A N C E S

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SBOT No. 18293250  
MR. RICK JACKSON  
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OTHER CAUSE NUMBERS AND APPEARANCES:  
F01-34007-T Joseph C. Garcia Mr. Paul Brauchle  
(later refiled as F01-00325-T)

CHRONOLOGICAL INDEX

Witness Volume

(No witnesses) 4

ALPHABETICAL INDEX

Witness Volume

(No witnesses) 4



EXHIBIT INDEX

Exhibit Number	Volume	Description	Ident	Offered	Rec'd
(No exhibits)	4				

P R O C E E D I N G S

February 23, 2001

THE COURT: This is Cause Number F01-34005-T, styled the State of Texas versus George Rivas, is the number we are going to put this under, even though my order applies in all six cases. I have before me Debra Thomas, who was here previously, and -- Mr. Williams, I'm sorry, I didn't write down your first name.

MR. WILLIAMS: Tom, Your Honor.

THE COURT: Tom Williams from Fort Worth. We have -- I have a copy of your motion and your authority, and will be glad for you to argue from that motion or present anything additional you would like to. Go right ahead.

MR. WILLIAMS: Thank you, Your Honor.

Your Honor, I would have some argument and I appreciate the opportunity the Court has given us to file this and to come before you. And what I would like to do this afternoon is ask the Court to look at what it did on February 2nd and perhaps re-evaluate some of these issues, or at least reconsider some of these issues. And as the Court does so, I would ask that the Court do so in the context of trying to analyze what is it that we are concerned might happen going forward that this order will do anything about.

The publicity that has already occurred, Your Honor, has occurred. And what happened and what was reported

1 before this matter came within your jurisdiction is done, and,  
2 obviously, the Court has no power to do anything about that.  
3 There is going to be publicity going forward, as there always  
4 is in cases like this. And some of the types of publicity that  
5 the transcript of the February 2nd hearing at least indicated  
6 you were concerned about, I think will happen regardless. Your  
7 example about the so-called expert on lie detection who goes on  
8 the radio talk shows and says, well, I can tell they're all  
9 lying, an understandable concern that the Court has --

10 THE COURT: My jury is watching that.

11 MR. WILLIAMS: Sure. Sure. But we really can't  
12 do anything about that. And the -- I think -- what I wanted to  
13 raise to your attention in the motion and to elaborate on a  
14 little bit today is that it seems to me that an order such as  
15 this in these kinds of cases really just deny the public access  
16 to a source of information that people might actually know what  
17 they're talking about and might have reliable and credible  
18 information that isn't going to interfere with the ability  
19 to --

20 THE COURT: Are you talking about anybody or are  
21 you talking specifically about the six defendants?

22 MR. WILLIAMS: Well, Your Honor if I could, as  
23 your order did, I am going to kind of break it down into  
24 different categories --

25 THE COURT: That is fine.

1 MR. WILLIAMS: -- of players.

2 THE COURT: It is hard for me not to jump in  
3 sometimes, and I will try not to.

4 MR. WILLIAMS: I understand. I understand. I  
5 appreciate it.

6 But what you did in your order, it seems to me,  
7 is you said there is -- the defendants, the six, because I  
8 understand you to say and I read your order that it would apply  
9 to all of them.

10 THE COURT: Yes, sir.

11 MR. WILLIAMS: And then you've got the  
12 attorneys, and then you've got what I call kind of everybody  
13 else, the nonlawyer, nondefendant participants. On the  
14 attorneys, as I read your order, all you really told them to do  
15 is follow the disciplinary rules, which I am sure they are  
16 going to do anyway. So I really would focus this afternoon on  
17 the other two categories.

18 On the defendants, at least some of whom have  
19 had some things to say --

20 THE COURT: Five of six have.

21 MR. WILLIAMS: Sure. That's right. Sure.

22 It seems to me, Your Honor, that with respect to  
23 those defendants who are now represented by competent counsel  
24 who will presumably advise them of the advisability of anything  
25 they do. If those defendants wish to speak out and if they are

1 going to -- if they want to be a willing speaker, then there is  
2 no reason the Court should inhibit that.

3 THE COURT: Except that they have the right --  
4 I'm sorry, I can't help myself.

5 MR. WILLIAMS: That is okay.

6 THE COURT: Except they have the right to come  
7 in here and plead not guilty on the day of trial.

8 MR. WILLIAMS: Yes, they do.

9 THE COURT: If up until that point every day  
10 they have said on every single news station and to every print  
11 reporter I am guilty --

12 MR. WILLIAMS: That --

13 THE COURT: -- and then I have to bring these  
14 people in and say you have to presume them innocent, and they  
15 say, but I just saw in the Fort Worth Star Telegram, they gave  
16 this big long interview and said they were as guilty as can be  
17 and thought they ought to be given the death penalty. It just  
18 makes it very difficult, would you not agree, for me to be able  
19 to get 12 people six times, if this continues up until the day  
20 before trial?

21 I am going to quit here in a minute.

22 MR. WILLIAMS: No, no. That --

23 THE COURT: If it continues up until the day  
24 before trial, it is going to be a very difficult thing for me  
25 to get 12 fair and impartial people who can put aside what.

1 these -- what continues to be reported and base their verdict  
2 on what they hear in the courtroom.

3 MR. WILLIAMS: Your Honor, I have two responses  
4 to that.

5 THE COURT: Okay.

6 MR. WILLIAMS: One is more -- the first I will  
7 give you is more general in nature, and the second will relate  
8 to this specific order.

9 THE COURT: Okay.

10 MR. WILLIAMS: As to the more general comment,  
11 in this day and age I think the ability to get the jury is  
12 easier perhaps than it once was, particularly in a metropolitan  
13 county such as this. We have got a large pool of potential  
14 jurors. And we are exposed to all kinds of information about  
15 all sorts of things.

16 And as time goes on, I understand this case  
17 probably, at best, won't be tried until the summer, news value  
18 diminishes, people's interest diminishes, other news events  
19 comes into play, we start talking presidential pardons or  
20 bombing Iraq or, you know, whatever it is we are talking about.

21 And I think with careful voir dire and careful instructions,  
22 which I know you will do, it can be done.

23 And we have seen other cases, not just in  
24 Dallas, but Houston, Fort Worth, Austin, where there has been a  
25 high volume of publicity. And some of the cases we cited in

1 the brief talk about that, that a large volume of publicity in  
2 and of itself does not necessarily inhibit the ability to get a  
3 fair trial.

4 The other -- that is the more general comment.

5 The specific on this order, and this is  
6 something that will relate to the second category as well, the  
7 nonlawyer, nondefendant category, is you gave the example of  
8 what happens if one of the defendants goes on TV or talks to  
9 newspaper every day and says, I did it, I did it, I did it.  
10 You know, you're assuming that is what he's going to to say.

11 THE COURT: Which some have.

12 MR. WILLIAMS: And I think -- but what I think  
13 your order potentially does, Your Honor, is it prohibits them  
14 from saying anything because the defendant and his  
15 representatives are ordered not to say anything which could  
16 reasonably be expected to be disseminated if it may reasonably  
17 be expected to pose a serious threat to the constitutional  
18 guarantee to a fair trial. And you use very similar language  
19 on that category of nonlawyer participants and witnesses.

20 And so I think by imposing upon someone who  
21 might otherwise choose to speak, that standard, I cannot speak  
22 out if it could reasonably be expected to pose a serious threat  
23 to the constitutional guarantee to a fair trial, I think --

24 THE COURT: Does that seem unfair?

25 MR. WILLIAMS: I think people are going to err

1 on the side of caution, if they want to obey your order, and  
2 they're not going to say anything. And I think that is the net  
3 effect of using language like that. That is even stricter  
4 language than we impose on the lawyers under the disciplinary  
5 rules.

6 THE COURT: The lawyers and the defendants and  
7 anybody else can tell you what is going on in the case, what is  
8 going to happen when, about settings --

9 MR. WILLIAMS: That's true.

10 THE COURT: -- about any procedural matters they  
11 want to talk about, they can talk about.

12 MR. WILLIAMS: Right, I agree with that. But  
13 about all that is, is -- I can tell you what I can also go find  
14 out in the district clerk's jacket, too, and that's fine. That  
15 is --

16 THE COURT: Well, not necessarily.

17 MR. WILLIAMS: That is public and you made clear  
18 that you're not restricting that, and I think that is as it  
19 should be. And I did not gather from the order or the  
20 transcript of the 2nd that you were concerned about that.

21 But my concern about your order using words like  
22 may reasonably be expected to pose a serious threat to the  
23 constitutional guarantee of a fair trial, if I want to be safe  
24 I better just not say anything, it seems to me, if I am a  
25 person who potentially --



1 THE COURT: They could come ask me what I  
2 think --

3 MR. WILLIAMS: True.

4 THE COURT: -- if I think what they intend to  
5 say is or is not.

6 MR. WILLIAMS: True, they could. I think that  
7 imposes a very serious constitutional issue if I have to come  
8 seek the permission of government before I want to do that.  
9 And I think that is the concern.

10 So -- and to make the comparison to the rules  
11 that the lawyers must abide by, what Rule 307 says, and which  
12 you incorporated in your order, is that a lawyer should not say  
13 anything that will have a substantial likelihood of materially  
14 threatening the ability to get a fair trial. And it seems to  
15 me you've got an even stricter standard on these nonlawyers,  
16 particularly the witnesses. The defendants have their own  
17 counsel, and that seems to be a little bit different.

18 But for a nonlawyer who might be a witness,  
19 might be involved in law enforcement, might have some  
20 connection to the case, to try to have to make that judgment,  
21 what -- if I say this, is it -- is there a reasonable  
22 expectation this will pose a serious threat, I think the net  
23 effect is that these people won't say anything at all.

24 As far as defendants themselves --

25 THE COURT: But you will agree that is not what

1 I am telling them to do? If they are overly cautious and law  
2 abiding and their choice is to not say anything at all, then  
3 that is their choice.

4 MR. WILLIAMS: Except that if I make that choice  
5 because I am concerned that if I guess wrong and you disagree  
6 with me and then I am at risk of being in contempt of court,  
7 then it really isn't my choice.

8 THE COURT: I appreciate that.

9 MR. WILLIAMS: The other comment I just want to  
10 make about the defendants, Your Honor, is, of course,  
11 obviously, constitutional rights can be waived. And to the  
12 extent that the defendants' own statements might create an  
13 issue, assuming the statement was given knowingly, and it seems  
14 to me there is less of a concern for the Court.

15 THE COURT: That their constitutional right to a  
16 fair trial could be waived? I'm sorry, I don't understand.  
17 This is more something I see as my issue.

18 MR. WILLIAMS: And I agree. The Court does have  
19 that responsibility independently. I do agree with that.

20 THE COURT: Okay.

21 MR. WILLIAMS: But it does seem to me that to  
22 the extent a defendant -- whether it is this case or any other  
23 case, to the extent a defendant chooses to grant a press  
24 interview and some adverse consequence flows from that  
25 decision, it seems to me the defendant has kind of accepted

1 that risk himself.

2 THE COURT: Except that I still have to pick a  
3 jury that can follow the law, regardless of what consequence  
4 they receive.

5 MR. WILLIAMS: Yes, you do, and your --

6 THE COURT: My concerns may be more selfish, Mr.  
7 Williams, and that is at least for the system and the fairness  
8 of the system because every one of these defendants are  
9 entitled to a fair trial, and I am doing the best I can to see  
10 that they get one. But anyway, I'm sorry, keep going.

11 MR. WILLIAMS: Well, I understand the Court's  
12 point, but I am confident that when it comes time to pick the  
13 jury you will have the process in place to determine if that  
14 has been a problem, and to the extent certain people may have  
15 been affected by something they heard, then that is what voir  
16 dire is for.

17 The other thing, Your Honor, I would ask you to  
18 think about this afternoon is not so much a constitutional  
19 issue, not whether you have the power to issue some sort of an  
20 order. I do think as this one is written it is broader than  
21 courts have upheld, but also to step back, as I said a moment  
22 ago, and evaluate should we enter this order. And in that  
23 context, think about what is it that might happen in the future  
24 going forward that this is intended to capture.

25 And I don't know that I know what it is, and I

1       regrettably was not here on February 2nd. I have read the  
2       transcript of the hearing. The things that I saw the Court  
3       expressed concern about in that transcript, it seems to me,  
4       this order doesn't affect. And so what we are doing is denying  
5       the press, and then ultimately the public, access to a source  
6       of information, of people who might have reliable information  
7       to give out.

8                   THE COURT: Okay. That's it? Is that it?

9                   MR. WILLIAMS: Well, I will be happy to  
10       entertain any more questions the Court has. I would urge, as  
11       we said --

12                  THE COURT: Would you let me just ask you this?

13                  MR. WILLIAMS: Yes.

14                  THE COURT: Would you not agree that the media  
15       access to six defendants or five out of the six, access  
16       probably to all six, this one chose not to talk, has been  
17       unprecedented? When ever has a criminal defendant over and  
18       over given interviews repeatedly about their guilt or innocence  
19       in a case and motives and what went on, et cetera, et cetera?  
20       A whole fact -- it doesn't happen. It doesn't happen. Not  
21       before trial.

22                  MR. WILLIAMS: Well, we certainly have precedent  
23       of defendants giving interviews. Now, quite often they're  
24       saying I didn't do it and proclaiming their innocence. But,  
25       you know, you asked me if it is unprecedented --

1 THE COURT: Media access already --

2 MR. WILLIAMS: I am mentally thinking for some  
3 examples, Your Honor. I don't think the notion of accused  
4 citizens talking to the press before trial is all that unusual.  
5 Now, maybe what is said in a given case may vary, but we have  
6 got plenty of examples out there where defendants, you know,  
7 upon an initial --

8 THE COURT: You may see more criminal cases than  
9 I do, but I believe this is the -- media access has already  
10 been --

11 (Ms. Thomas shaking her head)

12 THE COURT: Don't shake your head, please,  
13 ma'am.

14 MR. WILLIAMS: Your Honor, cases with political  
15 overtones, we see defendants talking all the time and we manage  
16 to pick a jury. I don't think it is unprecedented. Perhaps it  
17 is not common, but that is because most criminal cases don't --  
18 are not the type of case that draw attention in the first  
19 place.

20 By definition, 95 percent of the cases we try  
21 down here do not attract publicity. There is nothing that  
22 especially noteworthy about them. So the pool of cases in  
23 which there may even be any media coverage is a small pool.  
24 But I don't find it terribly unusual that a defendant may speak  
25 out.

1 Now, perhaps what has been said here might not  
2 be common.

3 THE COURT: I think the third defendant in the  
4 James Byrd trial gave an interview before trial.

5 MR. WILLIAMS: That is true, yes. 60 Minutes.

6 THE COURT: Uh-huh.

7 MR. WILLIAMS: And that is a good example. You  
8 know, what he wanted to say in that interview was not  
9 inculpatory. He was trying to say I didn't have quite as much  
10 to do with it as those other two guys.

11 THE COURT: Absolutely. Okay.

12 MR. WILLIAMS: I think the other thing, Your  
13 Honor, and I alluded to this a little bit in the papers. Some  
14 of what some of these defendants have been reported to say in  
15 the press I think goes beyond just guilt or innocence in this  
16 case and rises to the level of what I call an agreed political  
17 speech. If I want to speak out on the failings of the criminal  
18 justice system or speak out on the failings of the Texas prison  
19 system, and, you know, somehow or another that led to something  
20 that happened, that, it seems to me, does not really go to the  
21 guilt or innocence of the accused in this case, but that is  
22 captured by your order and it would seem to me they could not  
23 do that under this order.

24 THE COURT: Okay. Anything else? Mr. Shook,  
25 remarks?

1 MR. SHOOK: Nothing from the State, Judge.

2 THE COURT: Mr. Johnson?

3 MR. JOHNSON: We have no comment, Your Honor.

4 THE COURT: Mr. Jackson, would you like to say  
5 anything?

6 MR. JACKSON: No, ma'am. Thank you for  
7 offering, though.

8 THE COURT: Mr. Brauchle, comments? I think  
9 everyone should have --

10 MR. BRAUCHLE: I will decline, Your Honor.

11 THE COURT: All right. I am going to deny the  
12 request to vacate my restrictions regarding publicity.

13 Thank you both for coming over to Dallas today.  
14 All right.

15 (End of proceedings)

1 STATE OF TEXAS )

2 COUNTY OF DALLAS )

3 I, SHARON HAZLEWOOD, deputy court reporter in and for  
4 the 283rd Judicial District Court of Dallas County, State of  
5 Texas, do hereby certify that the above and foregoing contains  
6 a true and correct transcription of all portions of evidence  
7 and other proceedings requested in writing by counsel for the  
8 parties to be included in the reporter's record in the above  
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10 or in chambers and were reported by me.

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15 substitute court reporter while I prepared this transcript.

16 WITNESS my hand, the 15th day of July, 2003.

17 Sharon Hazlewood

18 SHARON HAZLEWOOD, C.S.R.

19 Certification Number: 628

20 Date of Expiration: 12-31-2004

21 283RD JUDICIAL DISTRICT COURT

22 Frank Crowley Courts Building

23 133 N. Industrial, LB33

24 Dallas, Texas 75207-4313

25 214/653-5674



REPORTER'S RECORD

74851

VOLUME 4 OF 61

February 27, 2001

Court Trial Cause Number F01-00328-T

THE STATE OF TEXAS ) IN THE 283RD JUDICIAL  
VS. ) DISTRICT COURT OF  
PATRICK MURPHY, JR. ) DALLAS COUNTY, TEXAS

**ORIGINAL**

OTHER CAUSE NUMBERS AND DEFENDANTS:

F01-34008-T (later refiled as F01-00324-T) Donald Newbury

(Appearances listed on next page)

**FILED IN**  
COURT OF CRIMINAL APPEALS

MAR 9 - 2004

Troy C. Bennett, Jr., Clerk

On the 27th of February, 2001, the above  
entitled and numbered cause came on to be heard in the said  
Court, Honorable Molly Francis, Judge Presiding, and the  
following proceedings were held, to-wit:

SHARON HAZLEWOOD, 283RD JUDICIAL DISTRICT COURT

A P P E A R A N C E S

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1 ATTORNEYS FOR DEFENDANT PATRICK MURPHY

2 BROOK BUSBEE

3 JUAN SANCHEZ

CHRONOLOGICAL INDEX

(No witnesses)

ALPHABETICAL INDEX

(No witnesses)

SHARON HAZLEWOOD, 283RD JUDICIAL DISTRICT COURT

EXHIBIT INDEX

(No exhibits)

1 P R O C E E D I N G S

2 February 27, 2001

3 THE COURT: These are Cause Nos. F01-00324,  
4 F02-00328-T, styled the State of Texas versus Donald Keith  
5 Newbury who is here with his attorney, Doug Parks. Co-counsel  
6 Kevin Brooks.

7 Patrick Henry Murphy, Jr., who is here with his  
8 attorney Brook Busbee. Co-counsel Juan Sanchez.

9 Here today just to go over a couple of matters  
10 that I thought I would bring Mr. Murphy and Newbury out to make  
11 sure that they had gotten information from their attorneys.

12 And Ms. Busbee, you and Mr. Parks tell me you  
13 all have discussed the restrictions regarding publicity that I  
14 entered in the State of Texas versus George Rivas.

15 You have gotten copies of my order regarding  
16 publicity regarding what your clients are allowed to talk to  
17 the media about or anyone else about. You-all have gone over  
18 those orders. Everybody understands those orders.

19 I imagine my orders are probably more lenient  
20 than your own instructions to your clients. I don't know. I  
21 might be wrong. But everybody is aware of those and has gotten  
22 copies. Anything we need to talk about any more as it relates  
23 to that?

24 MR. PARKS: Nothing from us, Your Honor.

25 THE COURT: Ms. Busbee, anything else?

1 MS. BUSBEE: No.

2 THE COURT: I have before me in Mr. Murphy's  
3 case an order asking that I appoint an investigator. Ms.  
4 Busbee, I have granted that order.

5 I have in Mr. Newbury's case a motion to  
6 photograph the defendant that has been filed by the State.  
7 Anything else the State wants to say in that regard?

8 MR. SHOOK: I think the motion speaks for  
9 itself, Judge. It goes to some tatoos viewed by witnesses  
10 there at the Oshman's but also his identification. Obviously,  
11 TDC keeps tracks of inmates' tatoos, and it is one of their  
12 identifiers. So we think it is relevant to identification.

13 THE COURT: And it is your intent to take those  
14 photographs today?

15 MR. SHOOK: Right now.

16 THE COURT: Yes. Mr. Parks, response?

17 MR. PARKS; Your Honor, we would object to the  
18 State taking those photographs for two reasons. One, we don't  
19 believe they are, in fact, probative of any matter of fact to  
20 be determined in this case. They're not relevant under Rule  
21 401.

22 The motion indicates that some of the witnesses  
23 may have observed some tatoos, doesn't indicate where on Mr.  
24 Newbury's body those tatoos were observed. Certainly tatoos on  
25 the chest, stomach, back probably would not have been observed



1 by any witnesses, so we would object to those.

2 And with respect to the identifier portion of  
3 Mr. Shook's motion, I certainly, while tatoos can be useful as  
4 identifiers, fingerprints, I believe, are generally considered  
5 to be the best use of identifiers.

6 And certainly I don't think there is any serious  
7 question that Mr. Newbury is, in fact, Mr. Newbury, and we  
8 would object to the photographs.

9 THE COURT: Objection overruled. Motion to  
10 photograph the defendant granted. That will be done today in  
11 the holdover.

12 I also have evidentiary search warrants in both  
13 cases. I believe Mr. Shook, the bottom line is you-all want  
14 saliva samples; is that correct?

15 MR. SHOOK: That is correct, Judge.

16 THE COURT: The facts have been recited in the  
17 affidavit. They have already been signed by a magistrate. The  
18 affiant has already sworn to them. Any other remark about that  
19 from the State? And I assume that you want to have those  
20 search warrants executed at this same time; is that correct?

21 MR. SHOOK: That's correct, Judge, and I believe  
22 the motions, probable cause speak for themselves, and the  
23 officers are standing by with the materials needed.

24 THE COURT: Okay. They appear to be in order.  
25 Any other response from either Mr. Parks or Ms. Busbee?

1 MR. PARKS: Nothing with respect to the search  
2 warrants, Your Honor.

3 THE COURT: Ms. Busbee?

4 MS. BUSBEE: No, Your Honor.

5 THE COURT: Then those will be executed at this  
6 same time. Anything else anybody would like to talk about?

7 MR. PARKS: Your Honor, I noticed that you  
8 granted Ms. Busbee's motion for appointment of an investigator.  
9 I filed a motion some days ago but has that been --

10 THE COURT: And it very well may be here now  
11 that I have got two -- here it is. Let me put it in the other  
12 file, Mr. Parks. My clerk tells me we need to try real hard to  
13 try to keep everything in the right file.

14 That motion for court appointed investigator,  
15 Mr. Parks, in the case of Donald Keith Newbury, that is also  
16 granted. As a matter of fact I also signed that February 6.  
17 You have already had one 21 days.

18 THE COURT: Okay. Anything else?

19 MS. BUSBEE: No.

20 MR. PARKS: No.

21 THE COURT: Sheriff, they can go back. And Mr.  
22 Shook, I bet your people are ready to go.

23 MR. SHOOK: They are, Judge.

24 (Proceedings adjourned)  
25

1 STATE OF TEXAS )

2 COUNTY OF DALLAS )

3 I, SHARON HAZLEWOOD, deputy court reporter in and for  
4 the 283rd Judicial District Court of Dallas County, State of  
5 Texas, do hereby certify that the above and foregoing contains  
6 a true and correct transcription of all portions of evidence  
7 and other proceedings requested in writing by counsel for the  
8 parties to be included in the reporter's record in the above  
9 styled and numbered cause, all of which occurred in open court  
10 or in chambers and were reported by me.

11 I further certify that this transcription of the  
12 proceedings truly and correctly reflects the exhibits, if any,  
13 offered by the respective parties.

14 I further certify that Dallas County did not pay a  
15 substitute court reporter while I prepared this transcript.

16 WITNESS my hand, the 1st day of June, 2002.

17 Sharon Hazlewood

18 SHARON HAZLEWOOD, C.S.R.

19 Certification Number: 628

20 Date of Expiration: 12-31-2002

21 283RD JUDICIAL DISTRICT COURT

22 Frank Crowley Courts Building

23 133 N. Industrial, LB33

24 Dallas, Texas 75207-4313

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SHARON HAZLEWOOD, 283RD JUDICIAL DISTRICT COURT

REPORTER'S RECORD

74851

VOLUME 5 OF 6 VOLUMES

TRIAL COURT CAUSE NO. F01-00328-T

STATE OF TEXAS \* IN THE DISTRICT COURT  
VS. \* DALLAS COUNTY, TEXAS  
PATRICK HENRY MURPHY, JR. \* 283RD DISTRICT COURT

\*\*\*\*\*

JURY PANEL

QUESTIONNAIRES

\*\*\*\*\*

**FILED IN**  
COURT OF CRIMINAL APPEALS

MAR 9 - 2004

Troy C. Bennett, Jr., Clerk

On the 16th day of May 2003, morning session, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Vickers L. Cunningham, Sr., Judge Presiding, held in Dallas, Dallas County, Texas.

Proceedings reported by machine shorthand.

**ORIGINAL**

A P P E A R A N C E S

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P R O C E E D I N G S

THE COURT: Good morning. While I have you standing up, I'm going to swear everybody in to be a potential juror in this case. Please raise your right hands.

[At this time the jury panel was sworn by the Court.]

THE COURT: You may be seated. I have just sworn you in to be a venire juror. Here the answer is to tell the truth on the questions concerning your qualifications to be a juror in this case. We have a lot of people standing over here on the sides and the back. We have seats in the middle. If you would like to have a seat, please do so. I know it's hot. You may be more comfortable standing up.

We've asked the services this morning at 7:20 to turn the air down but your commissioners are trying to save money, bottom line. So if you are hot, I'm hot in this robe. I trust you that is the truth. All right.

Thank you for being down here. We have a lot of work to do today. I need to go over some issues with you in this case. At this time I'm going to call Cause No. F01-00328, State of Texas versus Patrick Murphy. What says the State?

MR. SHOOK: State's ready.

1 THE COURT: What says the defense?

2 MS. BUSBEE: Ready for this procedure,  
3 Your Honor.

4 THE COURT: Yes. Each of you have been  
5 summoned here today to be a juror in a capital murder case  
6 in which the State seeks the death penalty. I hear the pin  
7 drop. I know the Sheriff gave you a few preliminary  
8 instructions here. I have to go over some issues with you  
9 at this time. I'll read it straight out of the procedure  
10 book.

11 In a capital felony case in which the  
12 State seeks the death penalty, the Court shall propound to  
13 the entire panel of prospective jurors questions concerning  
14 the principles as applicable to the case on trial of  
15 reasonable doubt, burden of proof, return of indictment by a  
16 Grand Jury, presumption of innocence, and opinion.

17 So those issues I have to go over with  
18 you today. I'll try to do it as quickly as I can. I need  
19 to go over the qualifications and potential exemptions that  
20 you may have in this matter and we have a short  
21 questionnaire for you to fill out.

22 I'll start by introduction of the parties  
23 at this time. For the State, Mr. Toby Shook, Mr. Bill  
24 Wirsky, Tom D'Amore. All three of these gentlemen are  
25 Assistant District Attorneys working for your elected

1 District Attorney, Bill Hill.

2 To your left, my right, we have Mr. Juan  
3 Sanchez, Ms. Brook Busbee Alexander. And up here is the  
4 defendant, Patrick Murphy. You have already met the  
5 Sheriff, Bryan Cook. He's -- if I don't have the answer,  
6 he's got it. And our Court Reporter, Ms. Nancy Brewer. She  
7 that to record everything that we say. If we talk to  
8 somebody individually, we have to do it at the corner of the  
9 bench and let her make a record. So those are the parties.

10 Now, very, very important that you  
11 understand the qualifications to be on any jury, much less a  
12 capital case. I'm going to go over the qualifications and  
13 be sure this applies to each and every one of you here.

14 Must be of at least 18 years of age.  
15 Must be a citizen of this State and of the county in which  
16 you are to serve as a juror. Means Dallas County. About  
17 the only excuse that I'm going to let anybody off of jury  
18 service is I'm going to move out of Dallas County. And  
19 beyond that, it's going to be really tough.

20 Must be qualified under the constitution  
21 and laws to vote in Dallas County. How many people remember  
22 years ago you didn't want to sign up to vote because you  
23 didn't want to be called for jury duty? We fixed that. We  
24 now use your drivers license information to summon people,  
25 so that it gives us a wider pool, a better cross-section of



1 our community, and lets everybody participate in jury  
2 service. The key is to have to be qualified to vote. You  
3 don't have to be registered to vote. You don't even have to  
4 vote. By the way I've got voters registration cards here in  
5 the back, if you would like to register for free.

6 Must be of sound mind and good moral  
7 character. Now that might apply to a few people. This is  
8 Dallas County. Now, you know the standard line is, Judge,  
9 I'm depressed and on Prozac or whatever. Well, it's 2003.  
10 And that's just, you know, if you get along in life, we need  
11 you to stay and fill out a questionnaire.

12 What do I mean by that? Truthfully, if  
13 you have a situation that is so on the forefront of your  
14 mind that you cannot serve. Let me give an example. I  
15 started a murder case and I will always remember this lady.  
16 It was up in my courtroom. And I seated the jury and told  
17 the folks this was a murder case. And a lady on the second  
18 row you could tell was visibly moved, shaken. Got up and  
19 left.

20 And the Sheriff asked her what the  
21 problem was and she had just buried her brother-in-law a  
22 week before who was murdered. So there's no way that she  
23 would be able to focus and sit for that type -- any other  
24 case down here, she would be fine. But that was just way,  
25 way too close to home. That's what we're talking about.

1 Must be able to read and write the  
2 English language. If you are a United States citizen, if  
3 you have been naturalized and you have taken an exam to be  
4 qualified, you are qualified, folks. I know English may not  
5 be your first language. You may think you have some  
6 difficulty. We want you to stay and fill out the  
7 questionnaire. It's an opportunity for you to serve.

8 Last one of the next ones is you must not  
9 have served as petit juror six days in the preceding six  
10 months in the county or six months in the district court.  
11 Now, we've just started a new jury wheel, so I don't think  
12 that would catch anybody here, but it's a possibility. If  
13 you actually served for six days, that's in the jury box and  
14 heard a case. We very rarely have cases that last more than  
15 a week down here, so it's not likely that would be an issue  
16 for anyone. If it is, let me know.

17 Must not have been convicted of a felony  
18 in this state or any other state or any federal  
19 jurisdiction. A felony conviction excludes you from jury  
20 service forever. And we're not talking about a deferred  
21 probation. I'm talking about a conviction.

22 Must not be currently today under any  
23 legal indictment or accusation for any misdemeanor or felony  
24 theft. If you have a theft conviction of any type, that's  
25 hot check at the grocery store, you cannot serve on the jury

1 if you are currently accused, if you are pending, going to  
2 court, you are not qualified to serve at this time. You may  
3 be barred forever, but today you are not qualified.

4 What do I mean by a hot check? We're not  
5 talking about if you bounced a check at the bank. We're  
6 talking about you got arrested, you went to court, you were  
7 found guilty, a final conviction for theft. Not the letter  
8 from the DA's Office that says you have hot checks out.

9 Come down and pick them up or we'll file a case against you.  
10 If you went to a Judge, a JP, a county court Judge, and you  
11 were found guilty of theft by check, you are not qualified.  
12 If you think that issue applies to you, there's a place on  
13 this questionnaire for you to put it down.

14 If you come up and ask me this morning,  
15 Judge, I think I've been convicted of a theft, I can't help  
16 you this morning. That's no way we can check all these  
17 records this morning. Put it in the questionnaire. Don't  
18 talk to me because I can't answer it. Okay?

19 So these are your qualifications,  
20 exemptions. Now, you can elect to take an exemption and be  
21 excused from jury service. You don't have to. If you are  
22 over the 70 years of age, you don't have to serve on a jury  
23 anymore. If you are over 70 and you are here, we would like  
24 for you to stay. We need your experience, your wisdom, and  
25 your life history to add to the jury pool. We would like to

1 have you.

2 If you have legal custody of a child or  
3 children under the age of ten and your service on a jury  
4 would require that child or children to be left without  
5 adequate supervision. What that means is if you have a job  
6 and you have day care and your kids are taken care of,  
7 that's not going to be an exemption you can claim. We're  
8 going to work business hours.

9 If you are a student in public or private  
10 secondary school and if you have a student ID card, then you  
11 can claim an exemption. You need to be in school and that  
12 also goes for a person that is enrolled and actually a an  
13 institution of higher education. That doesn't mean a class  
14 at Eastfield at 8:00 at night. It won't work.

15 Remember who writes these laws. Next  
16 one, if you are an officer or employee of the legislative  
17 branch of state government, you do not have to serve. And  
18 we're not talking about folks just the 140 days they are in  
19 Austin. They wrote a blanket exemption forever. If they  
20 are an officer or employee of the legislative branch of  
21 state government. Amazing how that works, isn't it?

22 If you are the primary caretaker of a  
23 person who is an invalid. You take care of an aged parent  
24 or family member in your home and you don't work outside the  
25 home, it would require that person to be left without

1 adequate supervision, that's an exemption you may claim.

2 Like I said, if you had been on a jury in  
3 a case since May 1 of 2000 -- I don't know why that's on  
4 there. This is an old card. I already covered that. So  
5 those are your qualifications for potential exemption.

6 Now I will speak to those folks who have  
7 those issues in a few moments. But think about that while I  
8 go through the next phase of this voir dire. I'll now go  
9 through with you some of the issues that are required by  
10 law.

11 Reasonable doubt. The State has to prove  
12 any case in a criminal matter beyond a reasonable doubt.  
13 They have to be able to present evidence to a jury to remove  
14 or beyond a reasonable doubt of the allegations they have  
15 alleged in the indictment.

16 Try to put this on a scale. In a civil  
17 case you typically go and argue about money or contracts or  
18 disputes involving property or custody. You have -- that  
19 standard in that case is by a preponderance, which means the  
20 greater weight and degree of credible evidence, fifty plus  
21 something percent. The issue is money.

22 The intermediate standard is clear and  
23 convincing. Very few people have heard of that standard.  
24 That would be used, for example, in a case where the State  
25 has filed a lawsuit to terminate your parental rights to

1 your children.

2                   The example that I use and I hope I never  
3 have another one, everybody will remember the little girl  
4 locked in the closet, the nasty closet in the trailer for  
5 two years, was starved almost to death. They had four other  
6 children. And the State filed a petition to remove all the  
7 children and terminate the parents' custody of all the five  
8 children. Clear and convincing evidence is required to  
9 terminate their parental rights.

10                   The highest burden in our courts is  
11 beyond a reasonable doubt. Why? You might lose your life  
12 or your liberty as a result of a conviction for a criminal  
13 case. So it gives you a logical process of how much  
14 evidence is required for the State to achieve their burden.  
15 It's not beyond all possible doubt. It's certainly not  
16 proof of one hundred percent.

17                   Someone says, Judge, I understand the  
18 law, but I'm going to require the State to prove it to me  
19 beyond all doubt. If you think about how that statement  
20 would sound, you would have to be a witness to the actual  
21 crime for you to have no doubt as to what happened. So,  
22 therefore, you couldn't be on the jury. So it's a doubt  
23 based on reason.

24                   I like this. This is Cunningham's  
25 definition. Common sense. If there's any one thing I want

1 to see from folks down here is exercise your common sense.  
2 Add it up. If the State meets their burden, find him  
3 guilty. If the State can't get there, find him not guilty  
4 beyond a reasonable doubt.

5 Return of indictment by the Grand Jury.  
6 The Grand Jury of Dallas County has returned an indictment  
7 in this case for capital murder. You say, Judge, I  
8 understand that. I know that the presumption of innocence  
9 alone is sufficient to acquit someone. But when they return  
10 an indictment, that means somebody has already looked at it.  
11 So that means something happened.

12 Well, let me -- I usually go through this  
13 and it takes about ten minutes. So I'll just give you the  
14 answers. The Dallas County Grand Jury this last year heard  
15 27,000 cases. This man here stands charged as one person  
16 out of 27,000 that was indicted in Dallas County last year.  
17 You take the amount of time, divided by the number of cases  
18 that they have to hear, and you have three to four minutes  
19 per case to listen to some evidence being presented to them  
20 by an investigator that something happened.

21 So the twelve people who will ultimately  
22 hear this case will be the first citizens, really, to hear  
23 anything about this case in any depth. So when I give you  
24 the line that simply by being arrested, confined, or  
25 otherwise charged with a crime gives rise to no inference of

1 guilt at his trial, that's exactly what it means.

2 Presumption of innocence. The  
3 presumption of innocence, alone, is sufficient to acquit the  
4 defendant unless and until the State can prove his guilt  
5 beyond a reasonable doubt. You have got to come in, you  
6 have got to have the mental acuity and the honesty to be  
7 able to walk into a courtroom and say, I presume this man to  
8 be innocent regardless of what the allegations are until the  
9 State can prove it to me otherwise.

10 And I can't stress that enough, folks.  
11 We just got through fighting a war in Iraq. If you made one  
12 of Saddam's buddies mad, they put you in a hole somewhere  
13 until your family could buy your way out. That's the  
14 flipside of the presumption of innocence. That's how strong  
15 I believe in that principle.

16 You don't -- the defense doesn't have to  
17 prove anything to you. They don't have to bring any  
18 evidence. It's the State's burden and it never shifts to  
19 the defendant. People confuse that. You see a three or  
20 four-minute snippet on TV where you see the lawyers  
21 blistering somebody on the witness stand and you confuse  
22 that with requiring the defendant to bring their own  
23 evidence. You don't have to. It's the State's burden. I  
24 can talk another 30 minutes on that, but I shall not.

25 Last thing is opinion. Folks, I've



1 already told you, you have been sworn in to tell the truth  
2 on these questionnaires. I've already told you we want you  
3 to bring your common sense into the courtroom. We want your  
4 honest opinions on these questionnaires.

5 Now, a sure way to get right back down  
6 here on a front row is to give some smart answer to a  
7 question. We had one juror that came in and, you know, just  
8 was the only way I can describe her attitude was hateful.  
9 Okay? We've got too many things going on, folks. You are  
10 too busy in your life. We're too busy down here. We don't  
11 need that.

12 And if I ask anybody here, do you want to  
13 be on a capital murder case? The answer is no. If you do,  
14 there's something wrong. All right? So I understand where  
15 you are coming from.

16 I will make you two promises. You can  
17 ask anybody in this courthouse how I run a courtroom. I  
18 will not waste your time. Number one complaint down here  
19 from jurors is they hurry up and wait. This morning it just  
20 takes 30 minutes to get 550 people all seated.

21 Now, this is the step one. After we fill  
22 out the questionnaires, you would be invited back to the  
23 courtroom for individual voir dire where we go through this  
24 questionnaire, one juror at a time. And when you get called  
25 back down here, you will either have a morning session or

1 afternoon session. What I mean by that is, if you are  
2 called back, you will be down here at 8:30. We will be  
3 through with you by noon. If you have an afternoon session,  
4 we call you at 1:30 and we will be through by 4:30.

5 Step one is you have a couple of hours  
6 this morning and step two, you will have a few hours in a  
7 morning or afternoon session.

8 Once the jury is picked, the procedure  
9 will be like a normal case. I heard the Sheriff talk to you  
10 about the timing in this matter. We will start the  
11 individual portion of the voir dire, the individual  
12 questioning, after school starts. I know people are wanting  
13 to travel on vacations during the summer. We're not going  
14 to bother you. And if you are on a normal working schedule,  
15 you have kids in school, that's fine. We will work around  
16 it. So I think school starts like August 15 or August 26.  
17 We will schedule you back at that time.

18 It will take approximately three months  
19 to get the jury selected. We anticipate having this trial  
20 concluded before Thanksgiving. I am not going to bother  
21 anybody over the Thanksgiving holidays. I want to be gone,  
22 too. So that gives you a timetable.

23 As I already told you, the only way,  
24 really, I'm going to let you off this panel is, Judge, my  
25 house is for sale or I have a contract. I'm moving out of

1 Dallas County. I will not be here in August. I'll talk to  
2 you. Beyond that, if you don't have a legal exemption or a  
3 qualification problem, don't come up.

4 Last thing I need to talk to you about is  
5 once you read this questionnaire, you will see on the second  
6 page that there's been some media coverage involving this  
7 case. I saw a camera. He's already gone. Media coverage  
8 down here on these cases, the newspaper, TV, is always  
9 around. If you think you have heard something about this  
10 case, fine. Put it down on the questionnaire.

11 But let me ask you this. You may have  
12 remembered something about this case in the media, but  
13 there's no way, no way that you have heard anything about  
14 this person on this particular offense. You may think you  
15 may have, but the bottom line is, if you can set aside  
16 anything that may have happened in the past and be able to  
17 say, Judge, I will hear the evidence from the witness stand  
18 and make my decision based on evidence submitted before this  
19 Court, that's what we're talking about. That's what we're  
20 talking about. You have an opportunity on the questionnaire  
21 to share your opinion on the media issue.

22 So with that -- all right, at this time  
23 the Sheriff is going to pass out the questionnaire. And as  
24 I heard Sheriff Cook tell you to put an A or B on your  
25 number on the top right-hand corner and circle the morning

1 or afternoon -- circle morning or afternoon panel. The way  
2 we contact you is by the phone numbers you provide and I  
3 would like to have E-mail, if you have got it.

4 The other thing I want to be sure you see  
5 is on the bottom of each page I want your juror number again  
6 on the bottom of the page, because we have these things just  
7 clipped up here. And at the end of the day we end up with  
8 25,000 pages and two or three clips get pulled off and we  
9 don't have the juror number on each page, then we have to  
10 call you back down. Ms. Smith, sorry, we lost your  
11 questionnaire. We can't find it. It's in the box  
12 somewhere. Can you fill out another one?

13 This questionnaire, I know, is detailed.  
14 It's basically what is your name, when were you born, and  
15 what happened next? And it does ask for a lot of  
16 confidential information. I will tell you that the parties  
17 are under Court order not to disclose any of this  
18 confidential information beyond the needs of this trial.  
19 When the trial is concluded these records are sealed by the  
20 Court and only upon a court order by the Court of Criminal  
21 Appeals whether I release a copy to that Court. I mean, the  
22 Court of Criminal Appeals doesn't get a copy unless they  
23 send me a court order saying, Judge Cunningham, you must  
24 send us a copy, because I put it on them to maintain the  
25 integrity of these records.

1                   So that's how we keep the chain of  
2 custody of these records, so you will understand that we  
3 have to have this information because we have got to be sure  
4 you are qualified and we need this confidential information.  
5 So if you have phone numbers, contact information, please  
6 provide that, so we can get back in touch with you.

7                   And beyond that I think the Sheriff is  
8 ready to pass these out. If you would, Sheriff, get the  
9 questionnaires out to the folks. If you need to talk to me,  
10 and I stress "need", about a qualification problem, Judge,  
11 I've been to the penitentiary, can't serve. Okay? I want  
12 to claim an exemption. Fine, talk to me. If it's an issue  
13 about I don't know, I'm not sure, fill out the  
14 questionnaire. We'll get back with you.

15                   So if you need to talk to me, I will have  
16 you line up by the corner by the Texas flag down the side of  
17 that wall and that way we can try to have some privacy, if  
18 there's a sensitive issue you need to talk about. So if you  
19 need to, come down. Come on down. Yes?

20                   PROSPECTIVE JUROR: I live in Denton  
21 County.

22                   THE COURT: No. 332, Mr. Robert  
23 Blackstone. Mr. Blackstone, what is your issue?

24                   PROSPECTIVE JUROR: I live in Denton  
25 County.

1 THE COURT: Any objection.

2 MS. BUSBEE: No.

3 MR. SHOOK: No.

4 THE COURT: Yes, ma'am?

5 PROSPECTIVE JUROR: I'm first of June  
6 moving to Cedar Creek Lake. I believe that is in Kaufman  
7 County.

8 THE COURT: Any objection?

9 MS. BUSBEE: No.

10 THE COURT: No. 1614 Debra Berrins, you  
11 are excused.

12 PROSPECTIVE JUROR: I didn't file for an  
13 exemption because --

14 THE COURT: No. 243 George Graf, G-R-A-F,  
15 and he's with DTS as a student. So you are full-time  
16 student, DTS?

17 PROSPECTIVE JUROR: Yes. I had the  
18 summer off, but I'm a full-time student.

19 THE COURT: That's an exemption we will  
20 let you have. Yes, your name?

21 PROSPECTIVE JUROR: Damion Ford, F-O-R-D.

22 THE COURT: No. 1856. Yes?

23 PROSPECTIVE JUROR: I'm attending school  
24 at Cedar Valley and I didn't know that I was going to bring  
25 an ID badge or anything.

1 THE COURT: Are you a full-time student?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: And, what, are you in school  
4 right now or just finished classes?

5 PROSPECTIVE JUROR: No, I'm in school  
6 now.

7 THE COURT: What does your fall look  
8 like?

9 PROSPECTIVE JUROR: I'm not going to  
10 school.

11 THE COURT: Then you are qualified. You  
12 don't have an exemption. Fill that out for us. Thank you,  
13 sir. Yes, ma'am? We have Jo Carroll Erwin, E-R-W-I-N, No.  
14 528. Yes, ma'am?

15 PROSPECTIVE JUROR: I've been in a  
16 federal prison before.

17 THE COURT: FIC, so that's a final felony  
18 conviction. Any objection?

19 MR. SHOOK: No.

20 MS. BUSBEE: No.

21 THE COURT: Thank you, ma'am. You are  
22 free to go. Yes? We have No. 253, Mr. Shawn Reynolds.  
23 Yes?

24 PROSPECTIVE JUROR: Attending school. I  
25 have my schedule here, current class, and I'm transferring

1 to Brookhaven next month. I'm taking three classes.

2 THE COURT: Are you a full-time student?

3 PROSPECTIVE JUROR: Not a full-time  
4 student, no, sir.

5 THE COURT: What does your fall look  
6 like?

7 PROSPECTIVE JUROR: I'm going to be  
8 taking three classes.

9 MR. SHOOK: During the day?

10 PROSPECTIVE JUROR: No, early evening.

11 THE COURT: They don't have the times  
12 here. I see the start and end date.

13 PROSPECTIVE JUROR: No, it doesn't,  
14 you're right. But I'm transferring next month to  
15 Brookhaven?

16 MR. SHOOK: We can agree.

17 THE COURT: Parties have agreed. Thank  
18 you, Mr. Reynolds. Have good luck in school. Yes? We have  
19 No. 838, Mr. William McLemon.

20 PROSPECTIVE JUROR: It's McLemore. They  
21 always misspell it.

22 THE COURT: You have been to TDC?

23 PROSPECTIVE JUROR: Yes. Well, I was --  
24 I did time in Decker.

25 THE COURT: Have you been on parole?



1 PROSPECTIVE JUROR: No.

2 MR. SHOOK: What type of --

3 THE COURT: What kind of case was it?

4 PROSPECTIVE JUROR: Three DWIs.

5 THE COURT: Three?

6 MS. BUSBEE: So it was a felony, the last  
7 one?

8 PROSPECTIVE JUROR: Yes.

9 MS. BUSBEE: No question about it.

10 THE COURT: No question about it. Thank  
11 you, sir.

12 THE COURT: Navy recruiter?

13 PROSPECTIVE JUROR: That's me.

14 THE COURT: You are not going to be  
15 shipped out any time, are you?

16 PROSPECTIVE JUROR: No.

17 THE COURT: No. 1821, Mr. Ungel Harris.  
18 Why wouldn't we want you?

19 PROSPECTIVE JUROR: Because I still have  
20 a case pending. I have a lawsuit against Florida I have to  
21 flip that case.

22 THE COURT: You have been accused of  
23 shipping cocaine. All right.

24 MR. SHOOK: Pending felony. I hope you  
25 take care of your case.

1 PROSPECTIVE JUROR: The State dropped it  
2 and the Fed picked it up, so I had to do the Feds case.  
3 They had to drop it because it wasn't me. So the Feds  
4 picked it up.

5 THE COURT: Yes? No. 1571, Mr. Harry  
6 Flood.

7 PROSPECTIVE JUROR: I work at night and I  
8 had to stay up all night. If I have to, I just wanted to  
9 say that. I'm standing talking to you and I'm asleep.

10 THE COURT: Can you stay awake long  
11 enough to fill out the questionnaire?

12 PROSPECTIVE JUROR: And I have a DWI.

13 THE COURT: DWI won't hurt you.

14 PROSPECTIVE JUROR: I plan to go to my  
15 car. I left my glasses. The guy, he filled out mine for  
16 me, but I couldn't see it. I left my glasses.

17 THE COURT: Go get your glasses, if you  
18 need them.

19 PROSPECTIVE JUROR: You will let me go  
20 for my glasses?

21 THE COURT: Sure.

22 PROSPECTIVE JUROR: Cool.

23 THE COURT: No. 2220, Brandy Reznicek.  
24 And you are currently accused of a felony or theft?

25 PROSPECTIVE JUROR: Do I explain?

1 THE COURT: Yes.

2 PROSPECTIVE JUROR: What it is, is we had  
3 a car reported stolen and when we go to get it, when we  
4 recovered the car, after it got towed, apparently it was  
5 still showing. So I got pulled over in it. So before my  
6 husband could get there with the paperwork, it was supposed  
7 to be dismissed, but I don't have any final paperwork.

8 MS. BUSBEE: Yes.

9 MR. SHOOK: Yes.

10 THE COURT: Thank you. Ma'am. The  
11 parties have agreed you are excused.

12 THE COURT: No. 905 Steven Sims. Yes?

13 PROSPECTIVE JUROR: I'm a member of the  
14 NBC media. I work for -- I'm familiar with a portion of  
15 this and so --

16 THE COURT: Certainly you wouldn't let  
17 the media influence your opinion, would you?

18 PROSPECTIVE JUROR: It wouldn't influence  
19 my opinion.

20 THE COURT: Great. Fill out the  
21 questionnaire for us. We really appreciate it. Yes, ma'am?

22 PROSPECTIVE JUROR: I no longer live in  
23 Dallas County.

24 THE COURT: That will work. Can I have  
25 your card? No. 159, Jennifer Schauer.

1 PROSPECTIVE JUROR: I live in -- it's  
2 been changed to Player (phonetic). I got married.

3 THE COURT: You are not qualified.

4 PROSPECTIVE JUROR: I live in Tarrant  
5 County now.

6 THE COURT: Yes? No. 1779, Mr. Jose  
7 Melendez. Yes?

8 PROSPECTIVE JUROR: I cannot write and  
9 read properly.

10 THE COURT: How long have you lived here,  
11 sir?

12 PROSPECTIVE JUROR: Six years in Dallas.

13 THE COURT: Six years in Dallas?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Where do you work?

16 PROSPECTIVE JUROR: I don't work right  
17 now because I'm sick.

18 THE COURT: You are sick?

19 MR. SHOOK: Agree.

20 MS. BUSBEE: I didn't understand what the  
21 exemption was.

22 MR. SHOOK: Can't read or write.

23 MS. BUSBEE: I'll agree. That's fine.

24 THE COURT: Thank you, sir. You are  
25 excused.

1 PROSPECTIVE JUROR: I'm sorry.

2 THE COURT: Yes? No. 1472, Waylon  
3 Pomroy. Yes?

4 PROSPECTIVE JUROR: I'm a diabetic and  
5 have high blood pressure and I didn't know if it would  
6 interfere with your trial.

7 THE COURT: It won't interfere with my  
8 trial. Put that on the questionnaire. It has a portion on  
9 there.

10 PROSPECTIVE JUROR: Thank you.

11 THE COURT: Yes, ma'am. Number?

12 PROSPECTIVE JUROR: I have my 93-year-old  
13 mother with me. She's not bedridden, but she couldn't get  
14 around and prepare meals.

15 THE COURT: No. 1455, Bonnie stoner.  
16 We'll let you claim an exemption. Thank you, ma'am.

17 MS. BUSBEE: Yes.

18 MR. SHOOK: Yes.

19 THE COURT: Yes, ma'am? No. 1830 is  
20 Cecilia, O-B-A-Z-U-G-H-A-H-M-W-A-N.

21 PROSPECTIVE JUROR: I'm a resident. I'm  
22 not a citizen.

23 THE COURT: You are not a citizen?

24 PROSPECTIVE JUROR: I'm a resident.

25 THE COURT: Not qualified. Thank you,

1 ma'am, you are excused. Number -- difficult name, 2427  
2 Chounlamany.

3 PROSPECTIVE JUROR: I just bought a house  
4 in Tarrant County and closing in two weeks and we'll be  
5 moving.

6 THE COURT: Tarrant County. Thank you,  
7 sir. You are excused. No. 1849, Veronica Rich.

8 PROSPECTIVE JUROR: I sold my house and  
9 will be moving out of Dallas County.

10 THE COURT: That will work. Where?

11 PROSPECTIVE JUROR: Hunt County.

12 THE COURT: Thank you very much. You are  
13 excused. Yes? No. 489, Mr. Oscar Burrell, Jr.

14 PROSPECTIVE JUROR: I'm on medication  
15 which includes Lasix, which is a diuretic and I brought my  
16 prescription. My doctor is out of town, so --

17 THE COURT: It won't bother you. Just  
18 fill out the questionnaire and put it on the questionnaire  
19 where it asks.

20 PROSPECTIVE JUROR: Okay.

21 THE COURT: Yes, ma'am? No. 2184  
22 McCarter.

23 PROSPECTIVE JUROR: I have a brother  
24 incarcerated and I feel I wouldn't make a good juror, a  
25 judge. I couldn't do that. He's incarcerated for 13 and a

1 half years in the state of Texas.

2 THE COURT: I understand that, but we  
3 need people from all perspectives and all walks of life to  
4 participate.

5 PROSPECTIVE JUROR: I'll do my best.

6 THE COURT: Fill it out on your  
7 questionnaire. I'm sure they will ask that you just put  
8 that on there. Yes? No. 880, John Harris. Yes?

9 PROSPECTIVE JUROR: My school started.  
10 I'll be out of the county. I'll in Rains County, then  
11 moving.

12 THE COURT: Are you a full-time student?

13 PROSPECTIVE JUROR: No, moving.

14 THE COURT: Any problems?

15 MS. BUSBEE: No.

16 MR. SHOOK: No.

17 THE COURT: Thank you, sir. You are  
18 excused. Yes? No. 648, Stephen Fejes. Okay.

19 PROSPECTIVE JUROR: I live in Dallas  
20 County, but I actually work in Brazil. I come back and  
21 forth.

22 THE COURT: How long does it take you to  
23 get down here?

24 PROSPECTIVE JUROR: Two days.

25 THE COURT: Gee.

1 PROSPECTIVE JUROR: I fly into Miami and  
2 then Sapolo (phonetic).

3 THE COURT: Are you gone a month?

4 PROSPECTIVE JUROR: A week here and three  
5 weeks there.

6 MR. SHOOK: We can agree.

7 MS. BUSBEE: Yes.

8 THE COURT: The parties have agreed. So  
9 you don't have to serve on this jury yes. No. 1360, Rick  
10 Von Pfeil.

11 PROSPECTIVE JUROR: Moving to Collin  
12 County.

13 THE COURT: Collin County.  
14 Qualification. When are you moving?

15 PROSPECTIVE JUROR: By July 15th.

16 THE COURT: By July 15th?

17 MR. SHOOK: That will do it.

18 THE COURT: You are excused. No. 1169,  
19 Lakisha Williams.

20 PROSPECTIVE JUROR: I'm still in high  
21 school.

22 THE COURT: How old are you?

23 PROSPECTIVE JUROR: Nineteen.

24 THE COURT: Will you be in high school  
25 this fall?



1 PROSPECTIVE JUROR: I graduate next  
2 January.

3 THE COURT: That's an exemption. Any  
4 problems?

5 MS. BUSBEE: No.

6 MR. SHOOK: No.

7 THE COURT: Good luck with school. No.  
8 2106, Angela Jones. Yes, ma'am?

9 PROSPECTIVE JUROR: I have a problem with  
10 reading and filling this out.

11 THE COURT: Have you looked at it and  
12 have you tried to fill out the first couple of pages?

13 PROSPECTIVE JUROR: I could probably fill  
14 out the first page, but questions, I'm not going to be able  
15 to.

16 MS. BUSBEE: Agree.

17 MR. SHOOK: Agree.

18 THE COURT: The parties have agreed to  
19 excuse you. Thank you, Ms. Jones. No. 1970, Peter Whipkey.

20 PROSPECTIVE JUROR: I will be in school  
21 full-time in the fall. I'm currently enrolled.

22 THE COURT: El Centro full-time?

23 PROSPECTIVE JUROR: Yes. Studying  
24 computers.

25 THE COURT: You will be a full-time

1 student this fall?

2 PROSPECTIVE JUROR: Yes, I will.

3 THE COURT: Agree?

4 MR. SHOOK: Agree.

5 THE COURT: Thank you. Exemption. Yes,  
6 ma'am? No. 485, Lorraine Grover.

7 PROSPECTIVE JUROR: I have a terminally  
8 ill husband who will be coming home this weekend they were  
9 giving him 206 months to live and I will be the one taking  
10 care of him.

11 MS. BUSBEE: Agreed.

12 MR. SHOOK: Agree.

13 THE COURT: You need to be with your  
14 husband. The parties have agreed and our prayers are with  
15 you. No. 888, Carmencita Cobb.

16 PROSPECTIVE JUROR: I have a freshman in  
17 high school. I pick her up at school at 4:00. Would that  
18 affect --

19 THE COURT: You have a freshman in high  
20 school?

21 PROSPECTIVE JUROR: And she gets off at  
22 4:00 in the afternoon.

23 MS. BUSBEE: Agree.

24 MR. SHOOK: Agree.

25 THE COURT: The parties have agreed. You

1 are excused. No. 688, Mr. Juan Villarreal.

2 PROSPECTIVE JUROR: I was found guilty on  
3 a DWI charge.

4 THE COURT: Won't hurt you.

5 PROSPECTIVE JUROR: Excuse me?

6 THE COURT: No problem.

7 PROSPECTIVE JUROR: No problem?

8 THE COURT: No, sir.

9 MR. SHOOK: Is it a misdemeanor?

10 THE COURT: How many DWIs have you had?

11 PROSPECTIVE JUROR: One.

12 THE COURT: No problem. No. 793 Yvonne  
13 Freeman.

14 PROSPECTIVE JUROR: I have like two or  
15 three. I'm in the process of going on medical retirement  
16 and then I've got a son in special ed going through some  
17 problems now and I have a family member in prison for --

18 MS. BUSBEE: We agree.

19 MR. SHOOK: We agree. No. 793?

20 THE COURT: No. 793. Thank you, ma'am.  
21 You are excused. No. 1458, Rosa Sanchez?

22 PROSPECTIVE JUROR: Yes, I think I don't  
23 understand anything. I'm sorry. I can talk to you, but I  
24 can't --

25 MS. BUSBEE: We can agree. I've talked

1 to her husband.

2 THE COURT: The parties have agreed.  
3 Thank you for coming down. No. 2265, Patricia Buttery.

4 PROSPECTIVE JUROR: Right. I'm going to  
5 be 70 in two weeks. I want to be exempt so I can travel.

6 MS. BUSBEE: Okay with me.

7 MR. SHOOK: Okay.

8 PROSPECTIVE JUROR: In two weeks by the  
9 time the contract comes about.

10 THE COURT: We start the case today so  
11 it's 70 today?

12 PROSPECTIVE JUROR: But when you call me.

13 MS. BUSBEE: We're not going to aggravate  
14 you. We don't want you.

15 PROSPECTIVE JUROR: I've been down here  
16 many times on juries, so I think that I have paid my dues.

17 THE COURT: Okay. They've agreed. Have  
18 fun. Your name? It's going to be all right. This is No.  
19 1047, Blythe Schroeder.

20 PROSPECTIVE JUROR: I live in Irving and  
21 I'm a single mom with three kids and I was going to  
22 Christmas Eve church when the ambulance went by me. And I  
23 was just at Oshman's yesterday and they renamed the street  
24 behind and my kids boys are --

25 MS. BUSBEE: Agree.

1 MR. SHOOK: Agree.

2 THE COURT: Okay. We'll agree. No. 311,  
3 Shekeysa Ealey.

4 PROSPECTIVE JUROR: I attend school in  
5 Alabama and I'm leaving in August to go back to school.

6 THE COURT: Where do you go to school?

7 PROSPECTIVE JUROR: In Alabama Oakwood  
8 College in Alabama.

9 THE COURT: That will give you an  
10 exemption.

11 THE COURT: Study hard. You are free to  
12 go. No. 1450, Nancy Robinson.

13 PROSPECTIVE JUROR: I've booked -- my  
14 husband and I have booked a cruise October 26 through  
15 November 12. Is that --

16 THE COURT: That's the target date.  
17 We're going to be right in the middle of trial in that  
18 period.

19 MR. SHOOK: You wouldn't mind missing  
20 that, would you?

21 MS. BUSBEE: You get paid six dollars a  
22 day.

23 PROSPECTIVE JUROR: I filled that out and  
24 I thought maybe I better.

25 MR. SHOOK: We can agree.

1 MS. BUSBEE: Yes.

2 THE COURT: They have agreed to let you  
3 go on your cruise.

4 PROSPECTIVE JUROR: My husband thanks  
5 you.

6 THE COURT: No. 1211, Diane Johnson.  
7 Yes, ma'am?

8 PROSPECTIVE JUROR: My daughter was  
9 murdered last year, so I won't be able to stay.

10 MR. SHOOK: We agree.

11 THE COURT: Parties have agreed. You are  
12 free to go. No. 725, Frank Arena?

13 PROSPECTIVE JUROR: My concern is that my  
14 job didn't pay me. I don't mind sacrificing two or three  
15 weeks in the event I was picked, but possibly you could  
16 apply political pressure to where I work and ask them to pay  
17 me. I heard of a case like that where the Judge actually  
18 called someone up.

19 THE COURT: Well, at this point I can  
20 tell you that I anticipate the trial will only last two  
21 weeks, not three. And if you would go ahead and fill that  
22 out and put on there that you are self-employed.

23 PROSPECTIVE JUROR: I'm not  
24 self-employed. I work for someone and we don't get paid for  
25 something like that. And I was wondering if it went on two

1 or three months, political pressure could be applied.

2 MR. SHOOK: Where do you work?

3 PROSPECTIVE JUROR: An auto dealership,  
4 711.

5 THE COURT: Put that on the  
6 questionnaire. No. 38, Mr. Adel.

7 PROSPECTIVE JUROR: I just read the case.  
8 I'm too close. A friend of mine, work, was buddy with the  
9 officer. We heard a lot about it and --

10 MR. SHOOK: We can agree.

11 THE COURT: Thank you, sir. You are  
12 excused. No. 860, Mr. Ricky Grogan.

13 PROSPECTIVE JUROR: I thought that I  
14 could fill this out. Some of these questions in there I  
15 have some mixed emotions because I've had an uncle murdered  
16 here in Dallas County, Michael Perkins. And so I went --  
17 and I have a grandfather down in Huntsville serving a life  
18 sentence. So starting to fill it out, thinking no problem,  
19 but some of the questions I get into, it's more than I think  
20 I really want to deal with.

21 MS. BUSBEE: If you agree, I will agree.

22 MR. SHOOK: We will agree.

23 THE COURT: Thank you. The parties have  
24 agreed to excuse you.

25 [End of Volume]

1 STATE OF TEXAS \*

2 COUNTY OF DALLAS \*

3 I, NANCY BREWER, Official Court Reporter for the 283rd  
4 Judicial District Court, do hereby certify that the above  
5 and foregoing constitutes a true and correct transcription  
6 of all portions of evidence and other proceedings requested  
7 in writing by counsel for the parties to be included in this  
8 volume of the Reporter's Record, in the above-styled and  
9 numbered cause, all of which occurred in open court or in  
10 chambers and were reported by me.

11 WITNESS MY OFFICIAL HAND on this the 4 day of

12 March, 2004.

13  
14  
15 Nancy Brewer  
16 NANCY BREWER, CSR, NO. 5759  
17 Expiration Date: 12-31-04  
18 Official Reporter, 283rd JDC  
19 Frank Crowley Crts. Bldg. LB33  
20 133 No. Industrial Blvd.  
21 Dallas, TX 75207  
22 (214) 653-5863  
23  
24  
25



74851

REPORTER'S RECORD

VOLUME 6 OF 61 VOLUMES

TRIAL COURT CAUSE NO. F01-00328-T

STATE OF TEXAS \* IN THE DISTRICT COURT  
VS. \* DALLAS COUNTY, TEXAS  
PATRICK HENRY MURPHY, JR. \* 283RD DISTRICT COURT

\*\*\*\*\*

INDIVIDUAL VOIR DIRE

\*\*\*\*\*

**FILED IN**  
COURT OF CRIMINAL APPEALS  
MAR 9 - 2004  
Troy C. Bennett, Jr., Clerk

On the 16th day of May, 2003, afternoon session, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Vickers L. Cunningham, Sr., Judge Presiding, held in Dallas, Dallas County, Texas.

Proceedings reported by machine shorthand.

**ORIGINAL**

A P P E A R A N C E S

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P R O C E E D I N G S

THE COURT: Good afternoon. I'm going to have you stand in just a second. We're looking for a couple more lawyers. There they are. Okay. If everybody would raise your right hand. I need everybody to raise your hand to take an oath to be a juror at this time.

[At this time the jury panel was sworn by the Court.]

THE COURT: Thank you. You may be seated. If you can't find a seat, stand along the walls in the back. Each of you when you received your summons to be down here on a special venire, I have some things that I must do with you statutorily. And I'll follow up on some of the instructions the Sheriff gave you.

You have been summoned here on what is referred to as a special venire in the case of the State of Texas versus Patrick Murphy. In a capital felony case in which the State seeks the death penalty, the Court shall propound to the entire panel of prospective jurors questions concerning the principles as applicable to the case on trial of the following, reasonable doubt, burden of proof, return of indictment by the Grand Jury, presumption of innocence, and opinion. So that's what I have to do statutorily here this afternoon.

I will go through your qualifications to

1 serve on any jury, exemptions to jury service in general for  
2 any case, and then I will take specific questions.

3 At this time I will introduce the  
4 parties. We have the State of Texas being represented by  
5 Mr. Toby Shook, Bill Wirskye, Tom D'Amore. The defendant,  
6 Mr. Patrick Murphy, up here, is represented by Ms. Brook  
7 Busbee Alexander and Mr. Juan Sanchez. And the Sheriff that  
8 you heard from earlier is Bryan Cook over here. If I don't  
9 have the answer, he does.

10 So we do have a few seats here in the  
11 middle of the aisle, if somebody would like to have a seat.  
12 Raise your hand, if there's a seat next to you. If there's  
13 a seat next to you, raise your hand. If you want a seat,  
14 just come in and find one. It's going to be a while. I  
15 don't want to say make yourself comfortable. We have too  
16 many people here to be comfortable and it's hot. I know  
17 it's hot. Try putting a robe on. I know it's hot. But  
18 please find a seat, if you want to. You will be here for a  
19 little while filling out a questionnaire here in a minute.  
20 Plenty of seats in the middle, if you want one. If you  
21 don't want one, that's fine. Just stand up. Okay.

22 You know you are down here for jury  
23 service on a special venire on a capital murder case in  
24 which the State seeks the death penalty. To serve on any  
25 jury you have to be qualified with these following

1 parameters on any case. No. 1, you must be at least 18  
2 years of age. No. 2, you must be a citizen of Dallas  
3 County, Texas.

4 Now, the people I invite to come down and  
5 talk to me, about the only way that you can get out of the  
6 jury service on this case is if you are moving out of Dallas  
7 County. Short of that, you are not going to do very well.

8 Now, I'll give you the dates. The best  
9 example I have is my house has a contract. We're closing.  
10 I'm moving to Collin County. Well, we can't use you. I  
11 know about how many people should be selling their houses,  
12 so we'll catch up to that.

13 You must be qualified under the  
14 Constitution and the laws of Texas to vote in Dallas County.  
15 You don't have to be registered to vote. How many people  
16 remember the only way you got jury service was to be a  
17 registered voter? And you ask somebody to register to vote,  
18 oh, no, I don't want to be called for jury service. We  
19 fixed that, you see. We fixed it. Now we use your drivers  
20 license. So we're going to catch you.

21 But you have to be qualified. If you are  
22 not registered to vote or if you need to change your voters  
23 registration address, we have those cards available here for  
24 you at your convenience. It's free and we would like to  
25 have a current address for you. We want you to vote, but

1 you don't have to.

2 No. 4, you must be of sound mind and good  
3 moral character. That will catch a few people. What am I  
4 talking about? Standard line is, Judge, I'm depressed. I'm  
5 on Prozac or whatever. Hello, this is Dallas. That won't  
6 work.

7 Now, let me give you an example of what  
8 I'm talking about. I will always use, which I hope I don't  
9 have another example, but it's a good one. I had a jury  
10 come to my courtroom upstairs and I had them in the panel as  
11 a group to start voir dire like we're doing now and informed  
12 the panel that we're going to hear a murder case.

13 A lady on the second row obviously was  
14 moved, visibly shaken, and she gets up and leaves. She  
15 doesn't even ask. She just leaves and the Sheriff goes  
16 after her. Ma'am, what's the matter? She had just buried  
17 her brother-in-law that was murdered the week before and she  
18 came on down to jury service. There's no way that she was  
19 going to be able to have any focus at all with such a recent  
20 traumatic event. That's what we're talking about.

21 It probably won't apply here because our  
22 trial date is way off. So I don't anticipate anybody down  
23 here with that situation. I hope you don't have that. But  
24 if you do, we'll ask you to write that down on your  
25 questionnaire.

1 Must be able to read and write the  
2 English language. Now, how many people here speak English,  
3 but it's not your first language? Okay. If you are a U.S.,  
4 naturalized citizen, and you had to take an English exam to  
5 be a citizen, you can be a juror.

6 Now, this is -- probably we have a few  
7 people that even though this morning, Judge, I've been here  
8 20 years. I've tried to complete the questionnaire. I  
9 simply don't understand some of the legal words that are  
10 asking for my opinion here. We probably need to talk to  
11 you. But you are going -- I'm going to have you try to fill  
12 it out and see how well you can do.

13 In Dallas County this really doesn't  
14 apply, but I'll read it. You must not have served as a  
15 petit juror for six days in the preceding three months in  
16 the county court or six months in a district court.

17 What that means is if you were actually  
18 sworn in and sat on a jury, in the jury box, on a felony  
19 case or a civil case and were actually on the jury -- this  
20 is not jury duty in that sense -- and you served for six  
21 days. Our jury wheel takes three years to go through the  
22 jury wheel, so I doubt that somebody here would have served  
23 three months in the county court or six months in the  
24 district court. But if you were at the end of the old one  
25 and beginning the new one, it could happen.

1           Must not have been convicted of a felony  
2 offense in this state or any other state or any federal  
3 jurisdiction. If you have a final felony conviction, you  
4 are not qualified to serve on a jury from now on. What does  
5 that mean? If you are on deferred for a felony, that's  
6 deferred probation, you are qualified. We need to know  
7 about it. But you are still qualified.

8           You must not have any grade of theft  
9 conviction. If you have ever been convicted of theft, you  
10 are not qualified. I'm talking about theft where you --  
11 even a hot check. I'm not talking about a hot check you  
12 write to Minyard's and you go pick it up. I'm not talking  
13 about a hot check that the DA's Office sent you a letter  
14 that said we're going to file a case on you, if you don't  
15 come down here and take care of your business.

16           Only type of theft conviction I'm talking  
17 about is if you actually wrote a hot check, you were  
18 arrested, you had to go before a Judge, and you were found  
19 guilty of theft by check or any grade of theft up to felony.  
20 That's what excludes you from being on jury service.

21           A conviction for DWI, unless you have got  
22 the third DWI, which is a felony, you are fine for jury  
23 service. Don't tell me, Judge, I got a DWI. I can't serve.  
24 Thank you so much. Have a seat and fill out the  
25 questionnaire. Okay?



1                   You currently cannot be under a legal  
2 indictment or legal accusation for any misdemeanor or felony  
3 theft or any other felony. So if you are currently charged  
4 with an offense, but haven't been found guilty, haven't even  
5 gone to court yet, you are not qualified to sit right now.  
6 Your status may change in the future. But simply by being  
7 accused of a crime, we don't want you on both sides of the  
8 system. Makes sense, doesn't it?

9                   Those are your qualifications. Each of  
10 you in this room have to meet those qualifications. Now,  
11 you may have an exemption that you wish to use to avoid jury  
12 service. If you are over 70 years of age, you can say,  
13 Judge, I appreciate the opportunity. I don't want to take  
14 it. We would like to have you stay. We need people with a  
15 lot of life experience and wisdom to serve on juries. We  
16 certainly would appreciate it, if you would.

17                   If you have legal custody of a child or  
18 children younger than the age of ten and service on a jury  
19 would require you to leave that child or children without  
20 adequate supervision. If you work a normal job, we work  
21 normal business hours here. That wouldn't be a problem.

22                   If you are a student of a public or  
23 private secondary school. I did have one high school  
24 student this morning. And or if you are a person enrolled  
25 and in actual attendance in an institution of higher

1 education. I'm not talking about taking a computer class at  
2 El Centro at night. It won't get there. We're talking  
3 about a full-time student.

4 Now, remembers who writes these rules.  
5 Your legislators in Austin. Listen to this one. If you are  
6 an officer or employee of the legislative branch of state  
7 government, you never have to serve on jury duty, whether  
8 you are up in Ardmore, Oklahoma, or not. Once again,  
9 remember who writes these rules. They carved themselves an  
10 exemption and that's not just when they are in session.  
11 This is forever. So, there again, those are the ones who  
12 make the rules.

13 If you are the primary caretaker of a  
14 person who is an invalid. If you have an aged parent who  
15 lives in your home. Once again, it would require them to be  
16 left without adequate supervision or some special needs  
17 person where you are normally there during the day where you  
18 can take care of them, you have an exemption. If you work a  
19 regular job, folks, that's not going to get there.

20 So those are your exemptions and I'll  
21 talk to a very few people who need to talk to me in a few  
22 minutes about that. Now, I need to go through the statutory  
23 required issues before we proceed any further with the  
24 questionnaires. I need to talk to you about these following  
25 principles of reasonable doubt.

1           The State has to prove their case to you  
2 in any criminal indictment situation beyond a reasonable  
3 doubt. What does that mean? Well, I don't have a  
4 definition for you, but the best thing that I can do is give  
5 you a scale to have you understand how important these cases  
6 are. You go to a civil court to argue about things,  
7 contracts, money disputes, whether or not somebody moved a  
8 trailer to your neighborhood. That was one that was in the  
9 paper lately. You want a civil court to enforce a civil  
10 sanction. The issue is money, generally, or don't do  
11 something on a civil matter. Standard in that case is by a  
12 preponderance of the evidence. You have to prove your case,  
13 just tilt the scale in your favor, 51 percent. Why? The  
14 issue is money.

15           Intermediate standard is clear and  
16 convincing. Very few people have heard of that. The type  
17 of example I can use is if the State were to file a lawsuit  
18 to terminate your parental rights to your children. My  
19 standard is over my dead body, but the legal standard for my  
20 kids and your kids is clear and convincing.

21           Example. You may remember the horrible  
22 case, and I hope I never have another one like this, but the  
23 little girl that was locked in the closet in the nasty  
24 trailer for two years. That family and four other children.  
25 The State filed a lawsuit to terminate all five children.

1 The petition was filed. The standard in that case is clear  
2 and convincing evidence.

3 The highest burden in our court system is  
4 beyond a reasonable doubt in a criminal case. It makes  
5 sense because you might lose your life or your liberty. So  
6 it's a logical process. How high does proof have to be?  
7 Well, it's not beyond all possible doubt. It's certainly  
8 not proof of one hundred percent. It's a doubt based on  
9 reason. And I like to use the word, Cunningham's  
10 definition, "common sense". We have to have a reason.

11 The State has to prove certain things to  
12 the jury. If they have failed to meet their burden on any  
13 one of the required elements and you have a reasonable  
14 doubt, sure, not guilty. It's their job.

15 Now, some people say, Judge, this is a  
16 case where the State seeks the death penalty. I want to be  
17 absolutely sure. Well, the only way that you can be  
18 absolutely sure about anything is if you were a witness to  
19 the particular criminal episode. If you were a witness, you  
20 couldn't be on the jury, because the jury would be listening  
21 to you. So you see that doesn't work, does it? It's  
22 certainly not a standard of one hundred percent because  
23 nothing in the world is 100 percent sure. It's a workable  
24 standard, so reasonable doubt.

25 Burden of proof. I said several times

1 the burden of proof is always on the State and it never  
2 shifts to the defense. Mr. Murphy or his lawyers do not  
3 have to present any evidence. People confuse this when you  
4 see this on TV. You get the four minute bite on a TV drama  
5 courtroom show and you see that the defense attorney  
6 blisters some witness and you confuse that with requiring  
7 the defendant to produce evidence. The defendant has no  
8 burden to produce any evidence. They're not bringing the  
9 charges. The State is those who are doing the accusing,  
10 have to do the proving. So you can never shift the burden  
11 and say I would require the defendant to do X. You can't do  
12 that.

13 Return of indictment by the Grand Jury.  
14 Some people say, Judge, you know, where there's smoke  
15 there's fire. Mr. Murphy has been indicted for capital  
16 murder. Something must have happened. Well, all I can tell  
17 you is we have a dispute of the facts and we need twelve  
18 people to be fair and impartial and listen to the whole  
19 case. You say the Grand Jury returned an indictment, they  
20 did something. Well, they did. Last year in Dallas County  
21 they heard 27,000 cases. That doesn't count 65 plus  
22 thousand cases for A and B misdemeanors, almost 100,000  
23 cases in the courthouse this year alone.

24 So if you have two brain cells working  
25 together, you can figure out that the Grand Jury heard

1 27,000 cases. They spent about two to three minutes on this  
2 case, which means they heard very, very, very, very little,  
3 if anything, that was substantive about this case. So what  
4 that means is the twelve people who would be impaneled on  
5 this case will be the first citizens of Dallas County that  
6 will hear any of this case in detail.

7 The indictment is simply an accusation  
8 that the State has filed that says we will prove this to a  
9 jury. So I will give you a written instruction that says,  
10 simply by being arrested, confined, or otherwise charged  
11 with an offense, gives rise to no inference of guilt at his  
12 trial.

13 Which leads me to the last thing,  
14 presumption of innocence. Any citizen who is accused of a  
15 crime is presumed innocent. Though he may be indicted by  
16 the Grand Jury, you must presume Mr. Murphy innocent,  
17 because you have heard no evidence. Some people have a  
18 problem with that. And if you do, that's fine. We simply  
19 need to know about it. But I can't tell you how much I  
20 believe in that principle because it would take me another  
21 hour and y'all don't want to be here. I know y'all don't  
22 want to be here. If you want to be here, there's something  
23 wrong.

24 You tell someone a capital murder case  
25 and if you are stepping up on the front row, I want to be on

1 this jury, we have a problem. So I know you don't want to  
2 be here. But it's one of those things your government has  
3 called you to serve.

4 Now, presumption of innocence. I try to  
5 pare it down. But we have just got through fighting a war  
6 about this type of stuff. If you make one of Saddam's  
7 buddies mad over in Iraq, you get put in prison until your  
8 family could buy your way out or prove your innocence, if  
9 you will. That's called shifting the burden.

10 People say, Judge, you know, the  
11 defendant is going to have to prove his innocence to me.  
12 No, it doesn't work that way. The presumption of innocence  
13 alone is sufficient to acquit the defendant unless and until  
14 the State can prove each and every element required in their  
15 indictment beyond a reasonable doubt. I can go an hour and  
16 a half on that one statement alone. But for right now you  
17 have got to have the mental acuity, you have to be smart  
18 enough and honest enough to say, yes, I understand that.  
19 Our Constitution is based on that. Our whole criminal  
20 justice system is based on that. And I will follow the law.  
21 I will wait until I hear the evidence before I make a  
22 decision.

23 Last thing is opinion. We need your  
24 honest opinions to the questions that are going to be asked  
25 of you in this questionnaire. The questionnaire is 20 pages

1 or so. Yes, I know. Asks you, what's your name, when were  
2 you born, and what happened next? And the reason we have  
3 these questionnaires is for this type of case.

4 And I'll go through the timetable now.  
5 We'll spend all day today talking to big panels. The  
6 lawyers will review these questionnaires for the next three  
7 months. At the end of the day we'll have 25,000 pages to  
8 read. Then we call in jurors, each of you, one at a time,  
9 to the court and discuss your questionnaire individually.  
10 That process will begin after school starts in August.  
11 Whenever, I haven't checked with my wife. I don't know when  
12 DISD starts, but we'll start individual jury selection after  
13 school, because you want to be out for vacation for summer,  
14 if you have a family. I understand that. That's why we're  
15 starting this early.

16 So I anticipate individual will start  
17 sometime in mid-August, the last week in August, whatever  
18 the calendar tells us. And I can't tell you exactly when  
19 the trial will begin, but it will be sometime in November.  
20 And I hope to have the trial concluded before Thanksgiving.  
21 Nobody wants to be involved in these types of trials over  
22 the holidays.

23 I anticipate the actual trial itself will  
24 last two weeks. So that gives you a somewhat of a roadmap  
25 of where we're going. Nothing this summer, start individual



1 in August, take a couple of three months for that, and start  
2 the trial sometime in November. That's the best I can do as  
3 a time estimate. So if you are moving out of Dallas County  
4 before November, then you can talk to me.

5 Opinion, like I say, we want your honest  
6 opinions and your fair opinions. We get some kind of  
7 screwball answer on a question, the lawyers are going to  
8 want to talk to you about that. So what am I saying is be  
9 honest and be fair. I mean, we had a lady a couple of weeks  
10 ago. She was just in a bad mood. I can use another  
11 adjective, but I won't use it. But she was in a foul mood.  
12 And I can react several different ways. But, folks, I have  
13 other things that I need to do.

14 So we have plenty to do handling just  
15 what we have to do. We need to leave the attitudes out of  
16 it. And if you don't want to be down here, join the club.  
17 And I just want to stress that. So just give us a fair,  
18 honest, good faith effort on these questionnaires.

19 Now, when you get the questionnaire, I  
20 think the Sheriff told you to put your number at the top and  
21 then circle afternoon questions. I won't go through the  
22 details, but we need to know that you are in the afternoon  
23 panel. And on each page I need to have your number because  
24 they were just clipped together with a binder. And if they  
25 get pulled apart, we have a box full of a thousand

1 questionnaires and we have your top page with nothing else  
2 but your name on it, so we have to call you back down here  
3 to do it again. So put your number on each page, so if it  
4 gets pulled apart, we can find out where it goes. Fair  
5 enough?

6 Let me try to run traps for you on the  
7 excuses. I've heard them all. A guy, Judge, I can't miss  
8 work. I won't get paid. I'm sorry. I can't help you. I  
9 understand that. This is like paying taxes. You don't want  
10 to do it, but sometimes you have just got to strap it on and  
11 go to Baghdad. All right? This is one of the highest  
12 callings that you can have to participate in your  
13 government. I can't help you with a business excuse.

14 Typical one if I have a trial this week  
15 is, Judge, I'm going out of town on Thursday. Well, that  
16 won't apply here simply because I'm cutting out all the  
17 vacation time. That won't be an issue. You have far enough  
18 lead time that you can plan your travel arrangements around  
19 a trial in November. After we get into it in August we will  
20 have a firm trial date. If you are called back in August,  
21 we will have a firm trial date. And if it's monumental, we  
22 can work around it.

23 Judge, I'm a sole proprietor, no one to  
24 run my business. I understand that. The law doesn't help  
25 you.

1                   So what am I trying to tell you? Come up  
2 here and visit. Beyond a felony conviction or you are  
3 moving out of Dallas County, I'm going to say, please have a  
4 seat, fill out the questionnaire, and put your issue on a  
5 questionnaire because there's no way that I can talk but to  
6 just a few people.

7                   So, Sheriff, would you like to pass out  
8 the questionnaires for us. Last thing I need to talk to you  
9 about is media. There are no cameras here this afternoon.  
10 But this is a capital murder case and the media does cover  
11 these trials. If you think you know anything about this  
12 case, chances are you may have heard something about it in  
13 the news. You have no idea what this individual is, in  
14 fact, charged with or particular case in general. You might  
15 have some idea, but there's no way that you have heard any  
16 detail to a sufficient degree to really know anything about  
17 this case.

18                   We did have one lady this morning that  
19 did know a lot about it through her personal connection and  
20 she was too close. But short of that, I don't think the  
21 media will be a problem in this case.

22                   So if you will, your time is your own.  
23 Please fill out the questionnaires and the Sheriff will take  
24 them up and then you are free to go. So if you need to talk  
25 to me, start here at the Texas flag and line up along the

1 wall so we can talk to you individually.

2 THE COURT: Parties agree on excusing  
3 Detective Curtis, No. 1387?

4 MR. SHOOK: Yes.

5 MS. BUSBEE: Yes.

6 THE COURT: Do you have your card? No.  
7 404 Vita Romero.

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: What can I do for you?

10 PROSPECTIVE JUROR: I'm disabled.

11 THE COURT: I can see that.

12 PROSPECTIVE JUROR: It's supposed to be  
13 on file down here, but they keep sending me these things.

14 THE COURT: We want you to serve on a  
15 jury.

16 PROSPECTIVE JUROR: So even if I'm sick?

17 THE COURT: Sick and disabled are two  
18 different things. Are you --

19 PROSPECTIVE JUROR: I'm epilepsy.

20 THE COURT: Are you telling me you simply  
21 can't make it through a two-week trial physically?

22 PROSPECTIVE JUROR: I guess, I guess, I  
23 guess.

24 THE COURT: We have to make  
25 accommodations. We want you to serve. If you tell me I

1 physically cannot make it through a two-week trial, then I  
2 understand. I know you don't want to.

3 PROSPECTIVE JUROR: My husband have to be  
4 with me.

5 THE COURT: Do you work, sir?

6 PROSPECTIVE JUROR: Yeah.

7 THE COURT: That causes a completely  
8 different problem.

9 MS. BUSBEE: We can agreed.

10 MR. SHOOK: Agree.

11 THE COURT: The attorneys have agreed to  
12 excuse her. Thank you, ma'am. No. 1824, Michael Klein.

13 PROSPECTIVE JUROR: My father was  
14 murdered and there was no way that I would be able to serve  
15 as a juror.

16 MS. BUSBEE: Agree.

17 MR. SHOOK: Agree.

18 THE COURT: Thank you, sir. The parties  
19 have agreed. No. 2494, Tamera George.

20 PROSPECTIVE JUROR: I'm a full-time  
21 student.

22 THE COURT: Where?

23 PROSPECTIVE JUROR: At Mountain View  
24 College.

25 THE COURT: Are you enrolled this fall?

1 PROSPECTIVE JUROR: Yes. I will be  
2 transferring to UTA.

3 THE COURT: Any problem?

4 MS. BUSBEE: No.

5 MR. SHOOK: No.

6 THE COURT: Thank you, ma'am. No. 1041,  
7 Lashondria Sheppard.

8 PROSPECTIVE JUROR: Today I have to pick  
9 up my daughter by 3:00.

10 THE COURT: No problem. Just fill out  
11 the questionnaire and you are free to go. Number --

12 PROSPECTIVE JUROR: I would have a  
13 medical excuse.

14 THE COURT: No. 20, Janet Nathan.

15 PROSPECTIVE JUROR: I would have a  
16 medical excuse by Wednesday morning. I took early  
17 retirement, so I wouldn't have to get up and be at any  
18 particular time. I'm type 2 diabetic and stress sends my  
19 blood sugar up.

20 MS. BUSBEE: We agree.

21 MR. SHOOK: Agree.

22 PROSPECTIVE JUROR: Do I need a letter  
23 from the doctor?

24 THE COURT: No. They have agreed on you.  
25 No. 505, David Maggard.

1 PROSPECTIVE JUROR: I live in Tarrant  
2 County.

3 THE COURT: Not qualified.

4 MS. BUSBEE: The bad news is you have to  
5 go over to Tarrant County now.

6 THE COURT: No. 1822, Jin Park.

7 PROSPECTIVE JUROR: I'm going to take an  
8 overseas trip and I have airline tickets June 7 and come  
9 here after nine months.

10 THE COURT: Be gone nine months.

11 MS. BUSBEE: Agree.

12 MR. SHOOK: Agree.

13 THE COURT: Thank you. The parties have  
14 agreed. You are free to go. Number?

15 PROSPECTIVE JUROR: I'm going to nursing  
16 school.

17 THE COURT: No. 1578, Oloyede.

18 PROSPECTIVE JUROR: I'm going to nursing  
19 school.

20 THE COURT: Will you be a full-time  
21 student this fall?

22 PROSPECTIVE JUROR: Yes.

23 MS. BUSBEE: Fine.

24 MR. D'AMORE: Fine.

25 THE COURT: No. 2815, Melia Emanuel.

1 Yes, ma'am? You have it filled out. You have been  
2 convicted of a felony?

3 PROSPECTIVE JUROR: Shoplifting 16 years  
4 ago.

5 THE COURT: Final conviction?

6 PROSPECTIVE JUROR: Sixteen years ago,  
7 yeah.

8 THE COURT: Was it a final conviction for  
9 shoplifting?

10 PROSPECTIVE JUROR: What do you mean by  
11 that?

12 THE COURT: Did you go to jail?

13 PROSPECTIVE JUROR: No, I paid.

14 MS. BUSBEE: We can agree.

15 MR. SHOOK: That's fine.

16 PROSPECTIVE JUROR: Six months'  
17 probation.

18 MS. BUSBEE: We'll agree. On here it's  
19 too iffy.

20 THE COURT: Thank you. They have agreed.  
21 You are free to go. No. 2183, Stephen Dumaine. Yes?

22 PROSPECTIVE JUROR: I am moving to Collin  
23 County.

24 THE COURT: When?

25 PROSPECTIVE JUROR: I have a contract on



1 a house and it closes next month.

2 THE COURT: Close enough. Thank you,  
3 sir. You are not qualified. No. 953, Daryl Coleman. Yes?

4 PROSPECTIVE JUROR: I'm moving to New  
5 Orleans in two weeks.

6 THE COURT: That will get it. No. 1758,  
7 Deitrich Armstrong.

8 PROSPECTIVE JUROR: I feel like I  
9 wouldn't be able to do it because my sister was murdered.

10 MR. SHOOK: Your sister was murdered?

11 PROSPECTIVE JUROR: Uh-huh.

12 MR. SHOOK: That's fine. We'll agree.

13 MS. BUSBEE: Yes.

14 THE COURT: We'll find another case for  
15 you, not this one. They have agreed you can go. No. 164,  
16 Tracy Cook. Yes, ma'am?

17 PROSPECTIVE JUROR: I'm going to be  
18 moving to Denton County. I will be closing on my house on  
19 the 15th of next month.

20 THE COURT: That will work. You are  
21 excused. No. 2159, Jalyn Zeiser. You are moving?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: Where?

24 PROSPECTIVE JUROR: Frisco. We were  
25 there today. Do you want our home warrant thing? I have it

1 with me.

2 THE COURT: You were sworn to tell the  
3 truth. You are not qualified, so you are free to go. No.  
4 2078, Matthew Butler.

5 PROSPECTIVE JUROR: I was convicted of  
6 burglary of a building when I was 18.

7 THE COURT: Did you serve probation?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Go to the penitentiary?

10 PROSPECTIVE JUROR: No. I think it was  
11 adjudicated probation.

12 MS. BUSBEE: What year was that?

13 PROSPECTIVE JUROR: '83.

14 THE COURT: So you want to do a record  
15 check or fill it out?

16 MS. BUSBEE: Have him fill out the  
17 questionnaire.

18 THE COURT: Highlight that and disclose  
19 it on your questionnaire. Number --

20 PROSPECTIVE JUROR: You got me for my  
21 last case in Dallas County, but it's too late.

22 THE COURT: No. 107 Donna Waller. Moving  
23 to Tarrant County.

24 PROSPECTIVE JUROR: Yeah. My house is  
25 supposed to be done in July and I'll be moving in August.

1 THE COURT: Very good. You are  
2 dismissed. No. 2904, Victoria Mejia.

3 PROSPECTIVE JUROR: I'm moving.

4 THE COURT: To where?

5 PROSPECTIVE JUROR: To New York.

6 THE COURT: Have a good time. No. 1195,  
7 Freeman Gragg.

8 PROSPECTIVE JUROR: I have glaucoma and I  
9 can't read small print.

10 THE COURT: Have you tried looking at the  
11 questionnaire?

12 PROSPECTIVE JUROR: It has to be pretty  
13 big for me to read it. No, I cannot read it. I cannot read  
14 it.

15 MS. BUSBEE: Agree.

16 MR. WIRSKYE: Agree.

17 PROSPECTIVE JUROR: I can't read that  
18 small print. I can read that line there, probably. I have  
19 a magnifying thing at home that I use.

20 THE COURT: The parties have agreed to  
21 excuse you, sir. You are free to go. No. 2563, Paula  
22 Enstrom.

23 PROSPECTIVE JUROR: I'm moving to San  
24 Francisco in the middle of August.

25 THE COURT: Can't use you.

1 PROSPECTIVE JUROR: Won't be here.

2 MS. BUSBEE: Yes.

3 MR. SHOOK: Yes.

4 THE COURT: Number --

5 PROSPECTIVE JUROR: Does this have  
6 anything to do with it?

7 THE COURT: No. You are fine. Fill it  
8 out. Bondsman. No. 1937, Larry Hackney.

9 PROSPECTIVE JUROR: I don't feel that I  
10 could make a judgment on my -- on a death penalty. I just  
11 don't believe in it. I mean, I just don't think I could.

12 MS. BUSBEE: You know, I know he should  
13 fill in the questionnaire, but if he's going to put it on  
14 there let's agree and save him the trouble.

15 MR. SHOOK: We can agree.

16 THE COURT: Okay, sir. Maybe we can find  
17 another case for you. No. 636, Miranda Baker. Yes, ma'am?

18 PROSPECTIVE JUROR: Full-time student in  
19 the fall and spring.

20 THE COURT: Where do you go to school?

21 PROSPECTIVE JUROR: Richland College.

22 THE COURT: Exemption. Any questions?

23 MS. BUSBEE: No.

24 MR. SHOOK: No.

25 THE COURT: Thank you, ma'am. You are

1 excused. No. 1744, Heather Cross.

2 PROSPECTIVE JUROR: My house is for sale  
3 and we'll be moving to Waxahachie.

4 THE COURT: Ellis County?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: No. 2390, Jennifer Anderson.

7 PROSPECTIVE JUROR: We've signed a  
8 contract off of our house. I'm moving. I'm going to be  
9 doing some consulting work, but from a travel trailer and I  
10 don't know whether you allow that. I don't mind filling it  
11 out, but we're moving to --

12 MR. SHOOK: You are moving to another  
13 county?

14 PROSPECTIVE JUROR: Yes. We're moving to  
15 the coast.

16 THE COURT: Your residence will be down  
17 there?

18 PROSPECTIVE JUROR: Smithpoint  
19 (phonetic), yes.

20 THE COURT: They've agreed. Thank you,  
21 ma'am. No. 2377, Valerie King.

22 PROSPECTIVE JUROR: Had this been over  
23 the summer, I would be able to serve, but I'm trying to get  
24 into medical school this year, so I'm going to be a  
25 full-time student during the academic year.

1 THE COURT: Questions?

2 MS. BUSBEE: No.

3 THE COURT: Thank you, ma'am. We'll let  
4 you claim your exemption.

5 THE COURT: Number -- Malone, 567, Mary  
6 Malone.

7 PROSPECTIVE JUROR: My problem is I  
8 didn't know we had to fill out questions and I didn't bring  
9 my reading glasses. Other than that, no problem. I can't  
10 see how to fill out the questions. That's the only problem  
11 that I have.

12 MS. BUSBEE: Let her go.

13 MR. SHOOK: Agreed.

14 THE COURT: They have agreed to let you  
15 go. You don't have to fill it out.

16 PROSPECTIVE JUROR: I was found guilty.

17 THE COURT: No. 1079, Mr. Lane Lucas.  
18 You were saying that you were found guilty of --

19 PROSPECTIVE JUROR: Theft over \$750,  
20 embezzlement, '92. I served a two-year probation, 120 hours  
21 community service.

22 THE COURT: Do you know if it was  
23 straight or deferred?

24 PROSPECTIVE JUROR: Straight.

25 MS. BUSBEE: Excuse him?

1 MR. SHOOK: Yes.

2 THE COURT: Parties have agreed, sir.

3 No. 1576, Shannon Edwards.

4 PROSPECTIVE JUROR: I'm technically  
5 moving out of Texas. I'm a student in Missouri, so I will  
6 be in Missouri.

7 THE COURT: You have a qualification, an  
8 exemption. I'll go for the out of state. Any questions?

9 MS. BUSBEE: No.

10 MR. SHOOK: No.

11 THE COURT: No. 1592, Ms. Foto.

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Not a citizen and school.

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: I believe we can let you go.  
16 Qualifications. No. 1720, Kara Devening.

17 PROSPECTIVE JUROR: I brought a notice  
18 and the -- I know it's far off, but I'm undergoing fertility  
19 treatment and I'm having surgery on my uterus next week and  
20 starting the process of in vitro.

21 MS. BUSBEE: We agree.

22 MR. SHOOK: Agree.

23 THE COURT: They've already agreed.

24 THE COURT: No. 2667, David Holguin.

25 PROSPECTIVE JUROR: I'm moving to Denton

1 County.

2 THE COURT: By the end of the month?

3 PROSPECTIVE JUROR: House is sold.

4 THE COURT: House is sold. Thank you.

5 No. 795, James Weber. Yes?

6 PROSPECTIVE JUROR: I wasn't

7 understanding what you were saying when you said a pending  
8 case. I have a pending DWI.

9 THE COURT: It says pending for theft or  
10 any felony.

11 PROSPECTIVE JUROR: And this is a  
12 misdemeanor.

13 THE COURT: Be sure you put that on your  
14 questionnaire, please, sir. No. 1542, Corinne Chamberlin.

15 PROSPECTIVE JUROR: I'm a resident of  
16 Denton County now. I just left the title company to come  
17 here.

18 THE COURT: All right. You are not  
19 qualified. We'll get you a case up in Denton County. Good  
20 luck. No. 509, Franco Williams.

21 PROSPECTIVE JUROR: I have enrolled and  
22 attending Amberton University on a full-time basis and the  
23 week of before Thanksgiving I'm taking my finals to get my  
24 degree.

25 THE COURT: Full-time student. You are



1 claiming your exemption. Any questions?

2 MS. BUSBEE: No.

3 THE COURT: You are free to go. No. 31,  
4 Louis Arnemann.

5 PROSPECTIVE JUROR: I'm being transferred  
6 out of the state with my employer, American Airlines. June  
7 13 is my last day in Dallas, actually in Texas.

8 THE COURT: All right. At least you have  
9 a job.

10 PROSPECTIVE JUROR: On the beach in  
11 Miami.

12 THE COURT: No. 1070, Alejandro Deanda.

13 PROSPECTIVE JUROR: I'm a full-time  
14 student right now. I'm on break, but by August I'm going to  
15 be full time.

16 THE COURT: Any questions?

17 MS. BUSBEE: No.

18 MR. WIRSKYE: No.

19 THE COURT: Thank you, sir. No. 1968,  
20 David Reznik.

21 PROSPECTIVE JUROR: Eight years ago I had  
22 a series of hot checks, spent a couple of nights in jail,  
23 and paid restitution.

24 THE COURT: Did you go before a judge?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Found guilty?

2 PROSPECTIVE JUROR: Pled guilty.

3 THE COURT: Plead guilty and found  
4 guilty?

5 PROSPECTIVE JUROR: I was found guilty  
6 and paid the fine and restitutions.

7 MS. BUSBEE: I don't have any problem  
8 with excusing him.

9 MR. WIRSKYE: We agree.

10 THE COURT: Thank you, sir. You are free  
11 to go. No. 1311, Lino Casas.

12 PROSPECTIVE JUROR: I'm not speaking one  
13 hundred percent English and I don't know how to write and  
14 read.

15 THE COURT: Any questions?

16 MS. BUSBEE: No.

17 MR. WIRSKYE: No questions.

18 THE COURT: Thank you, sir, you are free  
19 to go. No. 1052, John Jillson.

20 PROSPECTIVE JUROR: I have two children  
21 and when my wife goes to work, I take care of my kids. I  
22 have no child care provider. I have a five year old and 15  
23 month old.

24 THE COURT: What do you do in the day?

25 PROSPECTIVE JUROR: I work afternoons on

1 my days off when she flies the second half of each month, I  
2 watch my children.

3 THE COURT: Any questions?

4 MR. WIRSKYE: No questions.

5 THE COURT: Thank you, sir. We'll let  
6 you go. No. 2320, Wade Brooks.

7 PROSPECTIVE JUROR: I'm currently  
8 building a new home in Denton County.

9 THE COURT: Building a home?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Moving at the end of the  
12 summer?

13 PROSPECTIVE JUROR: No, sir. It should  
14 be October, the first of October.

15 THE COURT: Any questions?

16 MS. BUSBEE: No.

17 MR. WIRSKYE: No.

18 THE COURT: They have agreed. We will  
19 let you go. No. 2348, Ms. Jeong. Yes, ma'am?

20 PROSPECTIVE JUROR: Because my education  
21 is really low, my English is poor. I don't understand the  
22 question and write.

23 MS. BUSBEE: Okay.

24 MR. SHOOK: Okay.

25 THE COURT: They have agreed to let you

1 go. No. 1011, Ms. Ko?

2 PROSPECTIVE JUROR: I'm sorry, English is  
3 my second. I can't read and I can't write.

4 THE COURT: You can't make any of that  
5 out?

6 PROSPECTIVE JUROR: Just only the basics.

7 THE COURT: Just your name and address?

8 MR. SHOOK: We can agree.

9 THE COURT: They are not going to make  
10 you fill it out. You are free to go.

11 PROSPECTIVE JUROR: So I can go?

12 THE COURT: Yes, ma'am. Number No. 26,  
13 Dianne Goode.

14 PROSPECTIVE JUROR: I'm really worried  
15 about my participation, because I have hearing loss. I  
16 didn't catch everything you said. I notice there's a spot  
17 in the very back where you can fill in if you have a  
18 handicap. And I will be glad to do the questionnaire, but  
19 I'm really shaky on it.

20 MS. BUSBEE: We'll agree.

21 MR. SHOOK: Agree.

22 THE COURT: You are free to go. No. 838,  
23 Kevin Thurmaan.

24 PROSPECTIVE JUROR: Right now it's one of  
25 two problems. One of them is I don't have prescription

1 eyeglasses, so I can't really read right now. And the other  
2 reason is I'm on a new medication. My two different types  
3 of medication, one is called Abillified (phonetic) and the  
4 other one is called -- starts with a B-I, can't pronounce  
5 it. And it makes my vision blurry, so I can't --

6 THE COURT: We can't have blurry vision.  
7 We have agreed to let you go.

8 MS. BUSBEE: Agree.

9 MR. SHOOK: Agree.

10 THE COURT: No. 1479, Mr. Anthony Ruffu.  
11 Yes, what can I do for you?

12 PROSPECTIVE JUROR: Several months ago,  
13 five or six, I was severely attacked from behind and beaten  
14 in the face about 15 blows by a young African-American and I  
15 don't know if that is -- I don't -- I'm not happy about it.

16 MR. WIRSKYE: Agreed.

17 THE COURT: I don't believe there's a  
18 case you need to hear and the parties have agreed to excuse  
19 you. You are free to go. No. 962, Ramon Esquivel.

20 PROSPECTIVE JUROR: I just read this in  
21 the back and it says I'm not a citizen yet.

22 THE COURT: Not a citizen yet. We can't  
23 use you yet. Become a citizen and come back, okay?

24 PROSPECTIVE JUROR: All right.

25 THE COURT: No. 2239, Haruno Bowdoin.

1 Yes, ma'am?

2 PROSPECTIVE JUROR: I cannot fill out all  
3 this paper because I have problem with the language. I can  
4 speak a little bit, but I don't know much about murder.

5 THE COURT: You have tried and the  
6 parties have agreed to excuse you. Thank you. You are free  
7 to go. No. 205, Reginald Durley.

8 PROSPECTIVE JUROR: Yes. I don't feel I  
9 can give a verdict in somebody's death. I don't believe it.

10 MS. BUSBEE: Like I said before, we might  
11 as well, because he's going to be a 4 or 5.

12 THE COURT: He's a 4 or 5. So there's no  
13 way that you can be fair in this case?

14 PROSPECTIVE JUROR: It will be in my mind  
15 that I sentence somebody to death and I live with it.

16 THE COURT: You agree?

17 MS. BUSBEE: Yes.

18 THE COURT: Any questions?

19 MR. SHOOK: No.

20 THE COURT: They will let you go. No.  
21 851, Mr. Larry Burns.

22 PROSPECTIVE JUROR: My education won't  
23 allow me to do this. And for my beliefs, sending a person  
24 to the death penalty, I don't feel comfortable doing that.

25 THE COURT: I have a whole room of people

1 that don't feel comfortable.

2 PROSPECTIVE JUROR: My education won't  
3 allow me to do this because some of the questions I have  
4 problems with spelling, reading, and writing, so that's  
5 going to be a big problem in that area. And just along with  
6 that, my feeling of sending somebody down there, I couldn't.  
7 So I'm just being honest with y'all.

8 THE COURT: Mr. Sanchez, any questions?

9 MR. SANCHEZ: No.

10 MR. WIRSKYE: Agree.

11 THE COURT: All right, sir. You are free  
12 to go. No. 1260, Ms. Pescador.

13 PROSPECTIVE JUROR: Could you say again,  
14 please? Talk loud. I can't put down what I want to say. I  
15 don't know how to spell.

16 THE COURT: And what is your native  
17 language?

18 PROSPECTIVE JUROR: Japanese.

19 MS. BUSBEE: Agreed.

20 MR. SHOOK: Agreed.

21 THE COURT: The parties have agreed. You  
22 can go. No. 1276, Mr. Marco Salais.

23 PROSPECTIVE JUROR: I'm a Dallas police  
24 officer.

25 THE COURT: So?

1 PROSPECTIVE JUROR: And I also am in the  
2 process of looking for an apartment in Rockwall.

3 THE COURT: So?

4 PROSPECTIVE JUROR: That's the only thing  
5 that I wanted to talk to you about.

6 MR. SHOOK: We can agree.

7 THE COURT: I'm not going to let you off,  
8 but they are.

9 MR. WIRSKYE: I know him, Your Honor.

10 THE COURT: Thank you, sir. No. 869,  
11 Mr. Pedro Cruz.

12 PROSPECTIVE JUROR: I don't speak  
13 English.

14 THE COURT: Are you -- did you try to  
15 read this?

16 PROSPECTIVE JUROR: I tried, but I can't  
17 figure it out.

18 THE COURT: Any questions?

19 MR. SHOOK: We can agree.

20 MS. BUSBEE: No, sir.

21 THE COURT: They have agreed to let you  
22 go. No. 1698, Reginald Turknett.

23 PROSPECTIVE JUROR: It's against my  
24 religion.

25 THE COURT: What religion?



1 PROSPECTIVE JUROR: Church of Christ.

2 THE COURT: Questions?

3 MS. BUSBEE: No.

4 MR. SHOOK: No.

5 THE COURT: No way you can do this case?

6 MS. BUSBEE: Agree.

7 MR. SHOOK: Agree.

8 THE COURT: All right. They will let you  
9 off the hook. No. 581, Mr. Leslie Shoots. You could never,  
10 even if you could read this, you could never return a  
11 verdict that would assessing a death penalty in any  
12 circumstances?

13 PROSPECTIVE JUROR: I can read it, but I  
14 don't feel comfortable placing myself in that condition to  
15 condemn or judge. I'm struggling answering these questions.  
16 I'm really in a problem.

17 MS. BUSBEE: What we said previously  
18 about this matter, we can agree, because it won't make any  
19 difference based on our agreement with the State.

20 THE COURT: All right. They are going to  
21 agree to let you go. No. 748, Sharon Vaca. Yes, ma'am?

22 PROSPECTIVE JUROR: My husband is going  
23 to have major surgery. He has a testicular tumor next month  
24 and he's going to have equilibrium problems for about three  
25 months.

1 THE COURT: Husband having surgery. He's  
2 going to be down for three months? We're not going to be  
3 interviewing people before August. I want you to put that  
4 on your questionnaire and fill it out. And if you get a  
5 call and there's a problem when you get the call to come  
6 back down, let us know at that time. Okay?

7 PROSPECTIVE JUROR: Okay. Thank you.

8 THE COURT: No. 2274, Mr. Gulley.

9 PROSPECTIVE JUROR: Two things, number  
10 one, I'm with the Dallas Morning News and we did cover this  
11 in the newspaper when it happened.

12 THE COURT: Yes. Do you believe  
13 everything that's in the newspaper? You are under oath now.

14 PROSPECTIVE JUROR: I have to say yes  
15 because I work for the Dallas Morning News. I have to say  
16 yes, I believe in our product. But even beyond that, second  
17 thing is, in fact, I'm working out a traffic ticket with the  
18 City of Carrollton.

19 THE COURT: Traffic tickets? No problem.  
20 Finish that up for me.

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: No. 931, Mr. Manuel Flores.

23 PROSPECTIVE JUROR: I don't know if this  
24 has anything to do, but I went to -- we went to elementary  
25 school.

1 THE COURT: We did. I haven't seen you  
2 in 30 years.

3 PROSPECTIVE JUROR: Right. Lakewood  
4 Elementary.

5 THE COURT: Absolutely. I have not seen  
6 you in 30 years.

7 PROSPECTIVE JUROR: You know my brother,  
8 Danny.

9 THE COURT: Yes.

10 PROSPECTIVE JUROR: So I don't know if  
11 that --

12 THE COURT: They need to know that. It  
13 doesn't bother me.

14 PROSPECTIVE JUROR: We went to elementary  
15 school together.

16 MS. BUSBEE: So you have got some good  
17 stories. Put those in that questionnaire.

18 PROSPECTIVE JUROR: He is different than  
19 7th grade right now.

20 MS. BUSBEE: Wouldn't affect you in the  
21 trial. He's a neutral party.

22 PROSPECTIVE JUROR: If that's okay with  
23 you.

24 THE COURT: They need to know that you  
25 are not going to make a decision on the evidence based on

1 the fact that you and I went to school together 30 years  
2 ago.

3 PROSPECTIVE JUROR: I didn't know if that  
4 was ---

5 THE COURT: We appreciate you saying  
6 hello and, if you would, fill that out for us. No. 2556,  
7 Mr. Ernie Brown. Yes? What can I do for you?

8 PROSPECTIVE JUROR: Okay. I have kids  
9 under ten. You were saying if you have a child under ten  
10 that you can't be exempt.

11 THE COURT: Where do you work?

12 PROSPECTIVE JUROR: I don't work. I  
13 don't have a job right now.

14 THE COURT: That's pretty thin,  
15 Mr. Brown. Who has them right now?

16 PROSPECTIVE JUROR: My mama watch them  
17 for me, so I can come down here.

18 MS. BUSBEE: That's an exemption.

19 MR. WIRSKYE: You are the soul caretaker  
20 of those children?

21 PROSPECTIVE JUROR: Yes.

22 MR. WIRSKYE: And they are under ten?

23 THE COURT: They are going to let you  
24 claim your exemption. You are free to go. Number --

25 PROSPECTIVE JUROR: I'm not sure if I'm

1 part of Dallas County. I tried to vote last November and  
2 they told me I was part of Collin County.

3 THE COURT: No. 173, Ms. Radon.  
4 Haverwoods (phonetic) up in Dallas, 75297 (phonetic). So  
5 did you say it was Denton County?

6 PROSPECTIVE JUROR: They told me it was  
7 Collin.

8 THE COURT: City of Dallas.

9 MS. BUSBEE: That's possible.

10 THE COURT: It's possible.

11 PROSPECTIVE JUROR: I would love to stay.

12 THE COURT: Where do you pay your taxes?

13 PROSPECTIVE JUROR: My taxes?

14 THE COURT: Yes. You don't pay property  
15 taxes. You live in an apartment?

16 PROSPECTIVE JUROR: Right.

17 MS. BUSBEE: Where do you send your  
18 registration for your car?

19 PROSPECTIVE JUROR: I just bought a new  
20 car, I'm sorry.

21 THE COURT: Put it on the questionnaire  
22 and we'll check it with the map.

23 MR. SHOOK: We can probably check it  
24 right now.

25 THE COURT: Are you registered to vote?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Where do you vote?

3 PROSPECTIVE JUROR: They told me Collin  
4 County.

5 THE COURT: Okay. Probably want to  
6 figure out what county. They are going to let you go.  
7 Thank you. Number --

8 PROSPECTIVE JUROR: I'm having cataract  
9 surgery. I can't see well.

10 THE COURT: No. 1524, Ms. Nevaquaya. You  
11 are having cataract surgery in two weeks?

12 PROSPECTIVE JUROR: Three weeks. I can  
13 see once I have my surgery. I can't see to make out some of  
14 the lines.

15 THE COURT: You are having a problem  
16 keeping between the lines?

17 MS. BUSBEE: We've let other people go.  
18 I don't have any problem with it.

19 MR. WIRSKYE: Let her go.

20 THE COURT: They are going to let you go.  
21 No. 2289, Stephen York. Yes?

22 PROSPECTIVE JUROR: When I was 18 I did  
23 something young and foolish and I got convicted of it and it  
24 was pot smoking. I took it very serious and I take it very  
25 serious now.

1 THE COURT: Just put it on your  
2 questionnaire. They need to know that.

3 PROSPECTIVE JUROR: Do you put it down  
4 here for a conviction of a felony?

5 THE COURT: It probably wasn't a felony.

6 PROSPECTIVE JUROR: I don't know.

7 MS. BUSBEE: What year was it?

8 THE COURT: 1970. Just write it on the  
9 questionnaire.

10 MS. BUSBEE: We didn't have deferred back  
11 then.

12 PROSPECTIVE JUROR: I'm ashamed to talk  
13 about it now. It's not considered serious now. It's a very  
14 small crime now.

15 THE COURT: Just put it in there that you  
16 were convicted of marijuana. No. 2952, West, yes, ma'am.

17 PROSPECTIVE JUROR: I'm a simple person  
18 and I stay at home. I go to work and I'm not strong.  
19 That's not me. I don't have good answers to that. I don't  
20 have a mind for it, in other words. It would take me  
21 forever just to sit there and fill this out and put on there  
22 what y'all may want to hear. It ain't going to work with  
23 me. I'm not the type of person, I'm just not -- I'm sorry.

24 MS. BUSBEE: Let's not agree to people  
25 that are marginal.

1 MS. BUSBEE: I read my Bible and I pray.

2 THE COURT: You are going to have to fill  
3 this out, okay? It's part of the program. Number --

4 PROSPECTIVE JUROR: I filled out.

5 THE COURT: No. 680, Ms. Sosbe.

6 PROSPECTIVE JUROR: This tells about a  
7 medication that I have.

8 THE COURT: Put it on your questionnaire.

9 PROSPECTIVE JUROR: Okay. That's all I  
10 need to do. You don't need a copy of this?

11 THE COURT: Staple it to it if you want  
12 to and put it in there. No. 2171, Mr. Bailey.

13 PROSPECTIVE JUROR: I can't do this. I  
14 don't believe in the death sentencing at all under any  
15 circumstances. The Bible --

16 THE COURT: I need you to finish filling  
17 this out, please, sir. No. -- Mr. Huynh, No. 1035. ,

18 PROSPECTIVE JUROR: Because I'm not  
19 understanding this well, that's why I can't --

20 THE COURT: They have agreed to excuse  
21 you. You are free to go.

22 [End of Volume]

23

24

25



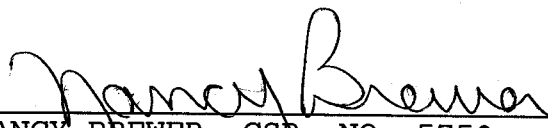
1 STATE OF TEXAS \*

2 COUNTY OF DALLAS \*

3 I, NANCY BREWER, Official Court Reporter for the 283rd  
4 Judicial District Court, do hereby certify that the above  
5 and foregoing constitutes a true and correct transcription  
6 of all portions of evidence and other proceedings requested  
7 in writing by counsel for the parties to be included in this  
8 volume of the Reporter's Record, in the above-styled and  
9 numbered cause, all of which occurred in open court or in  
10 chambers and were reported by me.

11 WITNESS MY OFFICIAL HAND on this the 4 day of

12 March, 2004.

13  
14  
15   
16 NANCY BREWER, CSR, NO. 5759  
17 Expiration Date: 12-31-04  
18 Official Reporter, 283rd JDC  
19 Frank Crowley Crts. Bldg. LB33  
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REPORTER'S RECORD

74851

VOLUME 7 OF 61 VOLUMES

TRIAL COURT CAUSE NO. F01-00328-T

STATE OF TEXAS \* IN THE DISTRICT COURT  
VS. \* DALLAS COUNTY, TEXAS  
PATRICK HENRY MURPHY, JR. \* 283RD DISTRICT COURT

\*\*\*\*\*

INDIVIDUAL VOIR DIRE

\*\*\*\*\*

**FILED IN**  
COURT OF CRIMINAL APPEALS

MAR 9 - 2004

Troy C. Bennett, Jr., Clerk

On the 28th day of August 2003, the following  
proceedings came on to be heard in the above-entitled and  
numbered cause before the Honorable Vickers L. Cunningham,  
Sr., Judge Presiding, held in Dallas, Dallas County, Texas.

Proceedings reported by machine shorthand.

**ORIGINAL**

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PROSPECTIVE JUROR INDEX

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P R O C E E D I N G S

THE COURT: Cause No. F01-00328, what says the State?

MR. SHOOK: State's ready.

THE COURT: What says the defense?

MS. BUSBEE: For the purpose of picking a jury, Your Honor, we're ready.

THE COURT: Arraign the defendant.

MR. SHOOK: "True bill of Indictment, by the name and by the authority of the State of Texas, the Grand Jury of Dallas County, State of Texas, duly organized at the January Term AD 2001 of the 282nd Judicial District Court, Dallas County, in said Court at said term do present that one Patrick Henry Murphy, Jr.;" -- is that your name?

THE DEFENDANT: Yes, sir.

THE COURT: "--- on or about the 24th day of December AD 2000, in the County of Dallas and said state did unlawfully then and there knowingly and intentionally cause the death of Aubrey Hawkins, an individual, hereinafter called the deceased, by shooting the said deceased with a firearm, a deadly weapon, and the said deceased was a peace officer, namely, City of Irving police officer, then and there acting in the lawful discharge of an official duty and the said defendant then and there knew the said deceased to be a peace officer and further unlawfully

1 then and there intentionally caused the death of Aubrey  
2 Hawkins, an individual, hereinafter called the deceased, by  
3 shooting the said deceased with a firearm, a deadly weapon,  
4 and defendant was then and there in the course of committing  
5 and attempting to commit the offense of robbery of Wesley  
6 Ferris, against the peace and dignity of the State, Bill  
7 Hill, Criminal District Attorney of Dallas County, Texas,  
8 and signed by the foreman of the Grand Jury."

9 THE COURT: Mr. Murphy, how do you plead  
10 to the indictment as presented to this Court?

11 THE DEFENDANT: Not guilty.

12 THE COURT: Sheriff, would you ask  
13 Mr. O'Neil to come in.

14 [Prospective juror in]

15 THE COURT: Good morning, sir. How are  
16 you?

17 PROSPECTIVE JUROR: I'm just fine, thank  
18 you. How are you doing?

19 THE COURT: You are Christopher Scott  
20 O'Neil?

21 PROSPECTIVE JUROR: Correct.

22 THE COURT: Have you had a chance to  
23 review the orientation guide that I provided for you?

24 PROSPECTIVE JUROR: That's right.

25 THE COURT: I'm not going to go outside

1 of that very much other than to ask you do you have some  
2 understanding of the law that we're going to be talking  
3 about here today?

4 PROSPECTIVE JUROR: Yes, sir.

5 THE COURT: Give you an outline of the  
6 time frame we're going to be considering in this matter, do  
7 you have any issues as far as being able to give the Court  
8 two weeks of time beginning on November 10th?

9 PROSPECTIVE JUROR: Actually I do. I  
10 tried to explain this. Tuesday and Thursday -- at the time  
11 of the first screening, I wasn't in school. I wasn't going  
12 to be. And now I have class Tuesdays and Thursdays. So --

13 THE COURT: And where will you be  
14 attending school?

15 PROSPECTIVE JUROR: Richland.

16 THE COURT: Is this full-time basis or  
17 part-time?

18 PROSPECTIVE JUROR: Part-time.

19 THE COURT: What time are your classes?

20 PROSPECTIVE JUROR: It's going to be from  
21 about 10:00 to 2:00. Actually, I have to go today to  
22 finalize that.

23 THE COURT: 10:00 to 2:00?

24 MR. SHOOK: Could I ask just a couple of  
25 questions?

1 THE COURT: Yes, sir.

2 DIRECT EXAMINATION

3 BY MR. SHOOK:

4 Q. How many classes are you taking?

5 A. Three classes.

6 Q. Three? Okay. And how many hours credit would  
7 that be?

8 A. Nine hours.

9 Q. And this is all going towards a degree, I take  
10 it?

11 A. Yes.

12 Q. What kind?

13 A. Business, general business.

14 Q. And you are going to also be working full-time  
15 during this period?

16 A. Yes, sir.

17 Q. The trial will be a couple of weeks-period, I  
18 guess, in November, which would be getting close to finals.  
19 Obviously, if you were asked to miss two weeks, to be down  
20 here for two weeks, that would be four class periods you  
21 would have to miss?

22 A. Correct.

23 Q. Which, obviously, would be pretty bit of a  
24 hardship. I went to college, but Mr. Wirskey didn't go to  
25 many classes and make it. Would that be something that's



1 going to really weigh on your mind since you are enrolled  
2 and working towards a degree, if you are placed on a jury  
3 and you had to miss classes?

4 A. I believe so.

5 MR. SHOOK: We can agree, then, Judge.

6 THE COURT: Mr. O'Neil, I appreciate you  
7 taking time to fill out the questionnaire and respond to the  
8 first jury call. As you said, your circumstances changed.

9 PROSPECTIVE JUROR: Yeah, they did.

10 THE COURT: And we all recognize the  
11 importance of education and we want your full attention, if  
12 you were going to be on this case. And the parties have  
13 agreed to excuse you at this time.

14 PROSPECTIVE JUROR: Thank you very much.

15 THE COURT: Thank you, sir.

16 [Prospective juror out]

17 THE COURT: Sheriff, may we have Carol  
18 Margaret Lawson.

19 [Prospective juror in]

20 THE COURT: Good morning, Ms. Lawson, how  
21 are you?

22 PROSPECTIVE JUROR: Good morning. Fine,  
23 thank you.

24 THE COURT: You brought your reading  
25 material. And as the orientation guide said, we didn't know

1 if we're going to talk to someone for a few minutes or a few  
2 hours. So a person was a few minutes, the first one this  
3 morning, but we appreciate you coming down. Did you have an  
4 opportunity read --

5 PROSPECTIVE JUROR: No, I didn't.

6 THE COURT: You weren't reading?

7 PROSPECTIVE JUROR: I started reading the  
8 State's witness list.

9 THE COURT: So you didn't have time to  
10 read the orientation guide?

11 PROSPECTIVE JUROR: No, sir.

12 THE COURT: It will shorten this up, if  
13 you take a minute and look through that real quickly and  
14 we'll be quiet.

15 PROSPECTIVE JUROR: [Prospective juror  
16 complies.] Okay.

17 THE COURT: Ms. Lawson, I know you had  
18 just a few minutes to briefly look through that and that  
19 gives you an idea of what we're going to be discussing this  
20 morning.

21 First question I have for you is this  
22 trial is scheduled to begin with testimony beginning on  
23 November 10th, last approximately two weeks. Is there any  
24 major problem that you would not be able to serve this Court  
25 for that period of time?

1 PROSPECTIVE JUROR: Um, I think that  
2 would be fine.

3 THE COURT: We'll be through way before  
4 Thanksgiving week. That is the objective. We don't want to  
5 mess with anybody's holiday. All right? Remember that you  
6 are under oath. If you don't understand any of the  
7 questions, just say, I don't understand. We're not trying  
8 to trip you up or trick you or anything else. It's a  
9 complicated process and the lawyers will be talking to you  
10 to get you to understand the law and then we'll answer any  
11 questions that you have.

12 PROSPECTIVE JUROR: Okay.

13 THE COURT: With that I'll turn it over  
14 to Mr. Shook. You may inquire.

15 MR. SHOOK: May it please the Court.

16 MARGARET LAWSON,  
17 having been duly sworn, was examined and testified as  
18 follows:

19 DIRECT EXAMINATION

20 BY MR. SHOOK:

21 Q. Ms. Lawson, my name is Toby Shook. I'm one of  
22 the prosecutors. I'll be asking questions on behalf of the  
23 State today. And as the Judge has told you, you know,  
24 there's not any right or wrong answers to any of our  
25 questions. We just want your honest opinions.

1                   We appreciate you taking the time, I  
2                   guess it was back in May, to fill out this questionnaire. I  
3                   know it was quite lengthy. There was some personal  
4                   information and believe it or not, it actually does save you  
5                   some time. But it was quite informative.

6                   What I'll do today is we'll ask some  
7                   questions from the questionnaire and follow up on a few  
8                   things. We're going to talk a lot about capital murder, the  
9                   death penalty, want to know how you feel about it. We're  
10                  going to go over the law in these types of cases and ask you  
11                  how you feel about different laws. But the bottom line is,  
12                  we just want your honest opinions. We know most people  
13                  would rather be somewhere else, obviously, but most people  
14                  like yourself understand your civic duty.

15                  Have you -- I don't believe that you have  
16                  ever been on a jury before?

17                  A.       No.

18                  Q.       Have you been called down to jury duty?

19                  A.       Yes.

20                  Q.       You know from that experience, then, this is a  
21                  lot different?

22                  A.       Yes.

23                  Q.       We do this individual interview, so to speak.  
24                  I think it sometimes intimidates some people, because you  
25                  feel like you are the one on trial when you are on the

1 witness stand. We all recognize that. And I know we can  
2 tell you to relax. It's kind of hard to do. But just try  
3 your best. We kind of warm up. People get more comfortable  
4 as we go along. But we understand how it's a little  
5 intimidating to be up there. Okay?

6 A. Yes.

7 Q. Let me -- this is background information. You  
8 grew up here in Texas. Looks like you spent your first  
9 years growing up in the Houston area?

10 A. Uh-huh, right.

11 Q. And you went to the University of Texas?

12 A. Uh-huh.

13 Q. And then the last few years you have been here  
14 in Dallas?

15 A. Correct.

16 Q. What brought you to Dallas?

17 A. My husband's job.

18 Q. And you have lived here for how long now?

19 A. Nine to ten years.

20 Q. Okay. Let me -- you put on the questionnaire  
21 that you had several friends that are attorneys?

22 A. Uh-huh.

23 Q. What type of law do they practice?

24 A. You know, I don't know. We have real estate  
25 attorney friends and, you know, I don't know if we have any

1 criminal --

2 Q. None that you know of, then?

3 A. None that I know of.

4 Q. Sometimes we ask that because if someone is a  
5 close friend of a criminal attorney or prosecutor, then we  
6 want to know what kind of war stories they've heard and that  
7 sort of thing. But you don't have that situation.

8 You know from talking with the Judge when  
9 you were first brought down, that this is a capital murder  
10 case and one in which the State is seeking the death  
11 penalty. And there was a lot of questions about the death  
12 penalty and how you feel about it on the questionnaire and,  
13 obviously, we're going to follow up on that. You probably  
14 had more time to think about it since that time.

15 A. Yeah.

16 Q. So I want to ask you several questions about  
17 that. You put on your questionnaire that you favor it as a  
18 law. Do you still feel that way?

19 A. Yes.

20 Q. Okay. Just tell us in your own reasons or  
21 your own words why you favor the death penalty, why you  
22 think it's an appropriate punishment in certain cases.

23 A. Um, well, I just feel like it's the law of the  
24 land, first of all, and that we need to abide by it.

25 Q. Is it something that you have always believed

1 in as you grew up?

2 A. Yes.

3 Q. Do you think it's a just sentence in certain  
4 types of cases?

5 A. Yes.

6 Q. When you think of a death penalty case, what  
7 types of cases come to mind?

8 A. Um, murder, um, and I'm very compassionate  
9 toward children, so that -- I mean, I don't know if that  
10 would ever warrant --

11 Q. A lot of people tell us that. We ask  
12 questions sometimes if you were the Governor of Texas and  
13 could decide what laws would be death, they will bring up  
14 certain murder cases and sometimes I ask if there was some  
15 other case other than murder, usually people say if you  
16 injure a child severely.

17 In Texas, right now the only cases  
18 reserved for the death penalty are murder cases and then  
19 only certain types of murder cases, one of those involving  
20 the death of a child under the age of six. But that's  
21 something a lot of the jurors tell us.

22 Have there been any cases that you  
23 followed in the media that you thought were appropriate for  
24 the death penalty?

25 A. Um, you know, my recollection is not that --

1 is not that good. I do tend to read the newspaper a lot and  
2 follow certain cases, but I just cannot specifically say.

3 Q. We asked one question, if you thought some  
4 crimes, just on the facts of the crime itself, might call  
5 for the death penalty and the example you used was the  
6 father that killed his daughters while his wife was on the  
7 phone. And that's a pretty infamous case.

8 A. Yes.

9 Q. That was the Bataglia case, I believe.

10 A. Yes.

11 Q. And you felt that was the type of case,  
12 obviously, involving children as victims.

13 A. Right.

14 Q. In Texas, the death penalty is reserved for  
15 intentional killings, not an accident, not self-defense. An  
16 intentional murder during the course of certain  
17 circumstances or aggravating facts. We have a lot of brutal  
18 murders that could be prosecuted and get a life sentence,  
19 but you can't get the death penalty.

20 I could pull a gun out, shoot Mr. Wirskye  
21 in the head because I didn't like his tie, and I could laugh  
22 about it. It's a brutal killing, but I couldn't get the  
23 death penalty.

24 To get the death penalty, you have to  
25 commit a murder during the course of a felony. If I go down



1 and rob the 7-Eleven and shoot the clerk, if I go break into  
2 someone's home and murder someone in the home, if I kidnap  
3 someone, if I murder someone during the course of a rape,  
4 those types of felonies, that could be a death penalty case.

5 A. Okay. I have a question. So -- but if your  
6 intention to kill him was premeditated, would that be --

7 Q. It would not.

8 A. Okay.

9 Q. And states differ. But the Supreme Court has  
10 left some guidelines. They can't -- and what they have  
11 basically in certain terms have said, look, you can't have  
12 it for every murder case. You have to have some guidelines.  
13 And Texas has limited it just to these types of cases. And  
14 sometimes that's fair and sometimes it's not.

15 I mean, the example we get the most is, I  
16 believe you talked about, is the Timothy Richardson case,  
17 the man that killed his wife --

18 A. Uh-huh. I'm familiar with that.

19 Q. -- in Park Cities was not a death penalty  
20 case, because -- a brutal killing, horrible killing, but he  
21 doesn't commit it during the course of a felony or that sort  
22 of a thing, but got a life sentence or equivalent of one,  
23 but didn't get a death penalty.

24 Other types of crimes, the murder of a  
25 child under the age of six, could be a death penalty case.

1 They chose that age for whatever reasons. Someone that  
2 murdered someone for money, like a hitman situation, could  
3 be a death penalty case. Murder of specific victims, such  
4 as a police officer on duty or a fireman on duty or a prison  
5 guard, could be a death penalty case. But those are the  
6 types of cases that the death penalty is limited to.

7 Do you think that's the -- those are  
8 appropriate types of cases?

9 A. Uh-huh.

10 Q. If it were up to you, would you might expand  
11 that to brutal crimes, such as, well, the Timothy Richardson  
12 case or something like that?

13 A. It would depend on the case, of course.

14 Q. The premeditation and that sort of thing?

15 A. Uh-huh.

16 Q. But you agree that those crimes should be  
17 considered for the death penalty?

18 A. Um, well, see, I have a difficult time here.  
19 Because if that's the law of the land, then I think we  
20 should abide by it and that should override my personal  
21 opinion.

22 Q. But your personal belief is what, that you  
23 might expand it some?

24 A. I might expand it some, yes.

25 Q. Okay. That's fine. A lot of people feel that

1 way, too. But the crimes I talked about, you think are  
2 appropriate, just depending on the facts of each case?

3 A. Say that again, please?

4 Q. The murder during a robbery, that sort of  
5 thing, you feel could be appropriate, just depending on the  
6 facts of the case?

7 A. Yes.

8 Q. Okay. The way the law is set up, the trial is  
9 divided into two portions. We have the guilt/innocence  
10 stage where we have to prove to you beyond a reasonable  
11 doubt that the defendant is guilty of the offense. If we do  
12 that, we then move to the punishment phase where you can  
13 hear additional evidence. The additional evidence could be  
14 the person's background, that sort of thing. It could be  
15 good things; it could be bad things. Then you get these  
16 Special Issues to answer in the punishment phase.

17 A. Okay.

18 Q. We'll go over these in a little more detail in  
19 a minute.

20 A. So the person's background would not be  
21 brought up during the --

22 Q. Guilt/innocence stage.

23 A. It would not?

24 Q. No. Usually all we can talk about is the  
25 crime itself. Now, there are certain situations where maybe

1 the background would come up, but most cases, it doesn't.  
2 Then in the punishment phase, you kind of get a view of  
3 their whole life, good things, bad things. And at that  
4 point in time you get these Special Issues.

5 The first issue basically asks is the  
6 defendant going to be a continuing danger to society? The  
7 second issue asks if the defendant actually caused the death  
8 or if they did not cause the death, did he intend for that  
9 to happen or anticipate that a life would be taken? And  
10 then the last question is a mitigation question which you  
11 kind of look at all the factors, all the evidence, and see  
12 if there's any mitigating circumstances in which you think a  
13 life sentence should be imposed, rather than a death  
14 sentence.

15 But if those questions -- and we will go  
16 in a little more detail in a minute. But if they are  
17 answered yes, yes, and no, the Judge would then sentence the  
18 defendant to death. He doesn't have any choice. He  
19 sentences the defendant by how the jury answers those  
20 questions. If they are answered any other way, he would  
21 sentence the defendant to life.

22 So if you found someone guilty of capital  
23 murder, the only two possible alternatives are going to be a  
24 life sentence or a death sentence and that all is determined  
25 by how you answer these questions. The Judge has no choice.

1 He's going to do -- he's going to sentence the defendant by  
2 how the questions are answered. Is that clear?

3 A. Yes.

4 Q. Are you aware of the method of execution in  
5 Texas?

6 A. Yes.

7 Q. By lethal injection?

8 A. Lethal injection, yes.

9 Q. The procedures are the same in each case. If  
10 the defendant is found guilty and the questions are answered  
11 yes, yes, and no, the Judge sentences that person to death.  
12 He is placed on death row where he would wait for a number  
13 of years. I can't tell you how long. At some point in time  
14 the Judge would then issue a date of execution.

15 On that date or a date prior to that,  
16 actually, he would be moved to downtown Huntsville where the  
17 executions take place. The reporters often have detailed  
18 stories about executions. You may have read some of them.  
19 The execution is by lethal injection.

20 On the date of the execution, the  
21 execution would take place at 6:00 p.m. He would be given  
22 an opportunity to meet with his family, with friends, loved  
23 ones, with a minister, an opportunity for a last meal. But  
24 at 6:00 p.m. he would be taken to the execution chamber, put  
25 on a gurney, and strapped down by leather straps. They show

1 that photograph of the gurney all the time on the news.

2 There would be witnesses brought in for  
3 the defendant, also for the victim's family, if they desire  
4 to view the execution. He would be given a moment of about  
5 two minutes to give a last statement. At that point in time  
6 the warden then signals the executioner who would inject  
7 lethal substances which would cause his heart to stop, his  
8 lungs to collapse, and, basically, for him to fall into a  
9 sleep. It doesn't take long, but those are the procedures  
10 in each case.

11 And I don't mean to be morbid to go over  
12 that, but it's one thing when we talk about the death  
13 penalty in a philosophical sense or you saw that horrible  
14 case on the news or that sort of thing and it's another one  
15 when you come down here and realize I might be on a jury,  
16 making these decisions.

17 And we want to put all our cards out on  
18 the table. That's our goal in this case. As prosecutors,  
19 we feel we have the type of evidence to prove to a jury the  
20 defendant is guilty under the law and that these questions  
21 should be answered in such a way that result in his  
22 execution. The defense will take the opposite view,  
23 obviously. And that's why we bring a jury down here.

24 Now, you have told us philosophically  
25 that you believe in the death penalty as a law, the law of

1 the land --

2 A. Uh-huh.

3 Q. -- for certain cases, depending on the facts.

4 What I want to know is do you feel -- and you can only  
5 answer this because you know yourself a lot better than we  
6 will ever know you, that you are the type of person who  
7 could listen to this evidence and if the State does prove  
8 these issues to you, you could answer in such a way that the  
9 defendant would be executed some day?

10 A. Okay. Will you repeat that just one more  
11 time?

12 Q. Do you feel that you are the type of person  
13 that if we do prove these allegations to you, that you could  
14 take -- actually take pen in hand and answer the questions  
15 in a way, knowing that when you did so, that some day down  
16 the line that the defendant would actually be executed?

17 A. Um, I have struggled with this since answering  
18 that questionnaire because I have always thought of it  
19 objectively and not on a personal basis. And, um, I'm just  
20 putting my cards on the table. I'm a little bit hesitant  
21 about the whole thing, because it is a personal thing that I  
22 will have to bear for the rest of my life. So --

23 Q. So you have some hesitation there?

24 A. Uh-huh.

25 Q. That's fine. That's why we ask the question

1 that way, because it's one thing to write about it or to  
2 talk about it --

3 A. Right.

4 Q. -- and it's a completely other thing when you  
5 realize that you have to participate in this decision.

6 A. Exactly.

7 Q. We have some people that come and talk to us  
8 and say, you know what? I believe in the death penalty. I  
9 believe in it in almost every case. And put me on the jury,  
10 you know, I want to do it. They never make it on the jury.  
11 But we have some people that tell us that.

12 We have other people that will tell us,  
13 quite honestly, I have religious objections to it. I've  
14 always been opposed to it. And to be perfectly honest, I  
15 don't care how much evidence you give me, I'm not going to  
16 answer them that way and I'm not going to be responsible.  
17 I've got to live with myself.

18 We have other people that tell us, I  
19 agree with the law and I think certain people should be  
20 executed. I would vote for it every time, if it were coming  
21 up on a bill to pass or an amendment or something like that.  
22 But if you got me down here and I have to make that  
23 decision, I'm too uncomfortable and I could not make that  
24 decision because you have to live with yourself. And that's  
25 fine if they feel that way. We have people that agree about



1 the law, but can't actually participate. You might be fine  
2 in a burglary trial or regular murder case or DWI trial or  
3 civil case, but have hesitation where you are unable to do  
4 that.

5 And if you feel that way, that's fine,  
6 too. An example I give to take it out of this context is,  
7 I'm glad when I see a new skyscraper going up or building  
8 because I know that shows progress being made and shows a  
9 strong economy in Dallas, but I've always been terrified of  
10 heights. And I see these guys walking around on high beams,  
11 and I know I could never do that. I'm glad someone can, but  
12 I can't do it and I wouldn't do it.

13 But some jurors feel the same way about  
14 the death penalty. I believe in it as a law, but I can't  
15 make that particular decision. Because the bottom line is  
16 that's something that you would have to live with. After  
17 you made that decision, you may have to second guess  
18 yourself. You may read about the actual execution of the  
19 person, the relatives being sad, him claiming his innocence,  
20 or whatever. And some people can't do it.

21 And if you feel that way, that's fine,  
22 too. But we just need to know that, because, like I said,  
23 there's no right or wrong answers. As you thought about it  
24 and we've talked about it, you filled out the questionnaire,  
25 you thought about it more, now that you are actually here

1 today and you can see a living, breathing human being at  
2 that end of the table, one which we feel will lie dead on a  
3 gurney in Huntsville, Texas, because of the evidence, is  
4 this something that you personally don't think that you can  
5 do? You would be fine in another case, but you could not  
6 participate in this type of case because of your  
7 hesitations?

8 A. (Long pause) Um, you know, I think I could do  
9 it, but it might be -- it might be difficult.

10 Q. Okay.

11 A. You know, I know that's kind of an evasive  
12 answer, but --

13 Q. Well, you know --

14 A. It's just one of those things. I guess I'm a  
15 very compassionate person and I love people. So -- but at  
16 the same time, you know, I feel like we should pay, you  
17 know, that punishment is what we need.

18 Q. I understand that.

19 A. So --

20 Q. From my point of view is this, once we put you  
21 on the jury, that's it. You are on. And that's why I need  
22 you to be as honest as you can right now, because you may be  
23 in a situation where eleven jurors go, look, they proved the  
24 case. We've got to answer these questions. And you are  
25 going, hey, I'm not comfortable with doing this.

1 And that's why, you know, as I said,  
2 there's nothing wrong with saying, hey, I couldn't do it,  
3 you know. But I don't want you to put yourself in a  
4 situation where you can't really do something and we go,  
5 fine, you said you could and let's get on the jury and that  
6 sort of thing.

7 But I'm never going to be able to know.  
8 You are the one that's going to be able to know that and you  
9 have never been in this situation.

10 A. Right. I've never been in this situation.

11 Q. And it's tough.

12 A. And one of my little theories that I live by  
13 in my life is, if it's questionable, don't do it.

14 Q. That's a pretty good philosophy. And does it  
15 feel questionable to you?

16 A. Uh-huh, yes.

17 Q. Let me go with you on one further avenue and  
18 ask you about the law on this, because some people have  
19 greater hesitation on this area of the law.

20 A. Okay.

21 Q. When we think of capital murder, we think of a  
22 guy who goes in and actually pulls the trigger. Okay? I go  
23 into a 7-Eleven, I pull a gun out, and I rob them and then I  
24 shoot the clerk. That's obviously a capital murder case and  
25 one in which we could seek the death penalty.

1                   The law says, though, that more than one  
2 person can, obviously, commit certain crimes. Sometimes  
3 they commit them in a group. Sometimes there's only one  
4 person that actually commits the murder, but several people  
5 help carry out the crime.

6           A.       Uh-huh.

7           Q.       We can prosecute everyone involved in the  
8 case, if they are fully participating in the crime, for that  
9 crime and the same with capital murder. Let me give you an  
10 example.

11                   Say me and Mr. Wirskye decide we want to  
12 rob a bank. We go in. I have a gun. Mr. Wirskye just  
13 starts loading up. He's got the bag. And I pull the gun  
14 out, cover everyone, and he loads the money up.

15          A.       Uh-huh.

16          Q.       But for whatever reason, I start shooting  
17 people. Maybe I kill one of the tellers. We leave the  
18 bank. We are caught later. I'm, obviously, guilty of  
19 capital murder. If I'm prosecuted, I could get the death  
20 penalty. Under the law Mr. Wirskye could also be prosecuted  
21 for capital murder. Not only could he be found guilty of  
22 capital murder because he participated in that event, but he  
23 could get the death penalty, even though he's not the  
24 triggerman.

25                   And some people -- and that's the law.

1 But some people draw a line there, morally, for themselves.  
2 They say for the triggerman, I'm for that type of death  
3 penalty case. When you talk about a situation where an  
4 accomplice is involved that didn't pull the trigger, no, I'm  
5 not. We call that the law of parties. I would just draw a  
6 line there. Life sentence, 99 years, 70 years, whatever,  
7 yes. But I could never give someone a death penalty that's  
8 just an accomplice or a party to an offense.

9 A. Uh-huh.

10 Q. Some people feel that way. Other people tell  
11 us, no, I could. How do you feel about that, that  
12 particular law? Is that something that you would draw a  
13 line on, if we were prosecuting a person who was not  
14 actually the killer, the triggerman, but just an accomplice  
15 or a party to the offense?

16 A. I would have to have more information. But I  
17 probably would draw the line.

18 Q. Okay. Is that -- and that's because they  
19 didn't actually commit the actual killing?

20 A. Uh-huh.

21 Q. A lot of people feel that way, too.

22 A. But, see, on the other hand, he shouldn't have  
23 been with you.

24 Q. Right. Right.

25 A. So -- you know, that's -- I would have to hear

1 more or know more.

2 Q. We can't go into the facts, obviously. All I  
3 can talk about is the law of parties itself. You could  
4 probably have some really brutal, where the accomplices are  
5 involved and some not. But some people would  
6 philosophically would draw a line there and say, look, I'm  
7 not going to execute people that aren't the triggerman. I'm  
8 going to reserve the death penalty for the killer.

9 A. Okay. I'm thinking about it further. I would  
10 probably draw the line.

11 Q. I mean, obviously, you could severely punish  
12 them with a life sentence or something.

13 A. Right.

14 Q. But if you would -- if it were up to you,  
15 reserve the death penalty for just the triggerman himself?

16 A. Yes.

17 Q. And as I said before, there aren't any right  
18 or wrong answers. We want to throw that out there because,  
19 again, putting all our cards on the table, we're prosecuting  
20 Mr. Murphy under the law of parties and we want to know from  
21 the get-go whether people can agree with that law or not.  
22 If you can't, that's fine. We have no argument with that.

23 A. So are you asking me whether I agree with the  
24 law?

25 Q. Yes.

1           A.       I would -- if that's the law, then I would  
2 agree with it.

3           Q.       That's where we get a little sticky with  
4 jurors because we want to ask you beforehand, telling you  
5 what the law is, how you feel. Because some jurors say, if  
6 that's the law, then I agree with it.

7           A.       Yes.

8           Q.       But then they have personal reservations that  
9 you reserve and say, look, that could be the law, but when  
10 I'm in the jury box, are you going to do what the law says  
11 or are you going to have these reservations? And there's  
12 nothing wrong with disagreeing with part of the law.

13          A.       Uh-huh.

14          Q.       Everybody disagrees with some part of it. But  
15 when we have to make our decisions, we have to know if you  
16 are on board with that or is that something really we're  
17 fighting too much of an uphill battle. Put me on a  
18 different type of case.

19                   What you have told me when we first began  
20 talking about this is if it came down to it, I guess, you  
21 would draw the line and reserve the death penalty for the  
22 triggerman, the person that actually caused the death?

23          A.       Well, okay. We were talking the law versus  
24 personal feeling.

25          Q.       Right.

1 A. And so -- you are asking me when it came down  
2 to it, what would I do?

3 Q. I'm asking you -- well, let me ask you this  
4 way. If we prosecuted a case to you under the law of  
5 parties, that is, the defendant didn't actually murder the  
6 person. It was an accomplice.

7 A. Right.

8 Q. Do you personally feel that that's a death  
9 penalty case, that you could give someone the death penalty  
10 or is that a case where you would say, no, if it's a  
11 nontriggerman, I'm not for the death penalty. I would  
12 reserve that for the other person?

13 A. Okay. Okay. I understand what you are  
14 saying. That would be questionable for me.

15 Q. You have some problems with that, too?

16 A. Yes.

17 Q. Okay. Well, I hate to keep beating around the  
18 bush or asking the same questions, but it's the only  
19 opportunity that I get to. And the Judge has to be sure on  
20 these things. But you, after thinking about it, I take it,  
21 have some reservations about personally participating in  
22 this type of trial?

23 A. Yes.

24 Q. You agree with the law --

25 A. Yes.



1 Q. -- feel it's appropriate, but just making this  
2 personal decision is something that you don't feel you would  
3 be comfortable doing?

4 A. Correct.

5 Q. Okay. Fair enough. That's fine. We just  
6 want your honest opinions. And the reservations that you  
7 have about making a life and death decision, I take it  
8 that's not something that's going to go away anytime soon?

9 A. I don't think so.

10 Q. Okay. Just from your demeanor I think I can  
11 tell that, but I want to make sure it's for the record. And  
12 are you telling us that this just isn't the type of case, a  
13 death penalty case, where you would make the life and death  
14 decision that you would be comfortable in making and don't  
15 -- I hate to put it this way, but maybe not objectively be  
16 able to look at the evidence because you are going to have  
17 these reservations, reservations about making a life or  
18 death decision?

19 A. Well, see, that's where the other part of me  
20 comes into play. And I think if it's clear-cut, then I  
21 think that -- it's just a lot of uncertainty, I guess,  
22 within my being. But I feel strongly -- although I feel  
23 objectively strongly about the death penalty, can I issue  
24 that myself?

25 Q. Right.

1 A. Can I live with that?

2 Q. That's what you are struggling with?

3 A. That's what I'm struggling with.

4 Q. And that struggle continues today?

5 A. Yes.

6 Q. When you see this man that's alive here in the  
7 courtroom and realize what our goal is?

8 A. (Prospective juror nods head.)

9 Q. As best you know yourself, then, do you think  
10 this is the kind of case that you can participate in or just  
11 not your cup of tea?

12 A. Um, well, I certainly feel like if I'm called,  
13 God has called me to serve and then I would do that.

14 Q. Okay.

15 MR. SHOOK: Can I have just a moment,  
16 Judge?

17 THE COURT: You may..

18 MR. SHOOK: May we approach the bench?

19 (Bench conference)

20 MS. BUSBEE: May it please the Court?

21 THE COURT: Ms. Busbee.

22 CROSS-EXAMINATION

23 BY MS. BUSBEE:

24 Q. Ms. Lawson, I know this is torturous, but  
25 here's the question in my mind. And let me take you to this

1 part. We're talking about people who are parties and to a  
2 hypothetical capital murder, not one that, you know, not  
3 talking about any specific facts. After a person has found  
4 someone guilty of capital murder as a party, they are  
5 eligible for the death penalty, certainly, that's correct.

6 But the juror has to go into an almost  
7 entirely different trial. It's a different trial. The  
8 second part has to do with these three issues. And these  
9 three issues as they are printed on that board, discuss what  
10 would be necessary for a jury to assess a death penalty to a  
11 party.

12 So, I mean, the first one makes sense.  
13 Is this person going to continue to be a threat? It's the  
14 second one that is unique to where someone is a party to an  
15 offense. That one says whether he actually caused the death  
16 or not, he either intended to kill the deceased or intended  
17 to kill someone or anticipated that a human life would be  
18 taken.

19 Before a juror would find that question  
20 yes, they would have to be satisfied. And I loved what you  
21 said, when it's questionable, don't do it. It's just a  
22 simple way of saying beyond a reasonable doubt. In fact,  
23 it's a better way to say it.

24 So I ask you this question. Under the  
25 circumstances where you have -- you are sitting on a

1 hypothetical capital murder jury and you have found that  
2 person guilty as a party, would you be comfortable following  
3 the law and if it was proved to you beyond a reasonable  
4 doubt, Special Issue No. 2 and Special Issue No. 1, could  
5 you answer yes to those questions?

6 A. If I were called and on the jury?

7 Q. Yes, ma'am.

8 A. Yes.

9 Q. So you see -- and, actually, you are the  
10 favorite kind of juror that we have because you are telling  
11 us the absolute truth. You are telling us how you feel, but  
12 that you would follow the law?

13 A. Right.

14 Q. Okay. I appreciate it.

15 DIRECT EXAMINATION CONTINUED

16 BY MR. SHOOK:

17 Q. So the hesitation you had, you are telling us  
18 now --

19 A. No.

20 Q. I can do it, it won't be a problem, if you  
21 prove the case to me?

22 A. Okay. Um, I can do it. I can do anything.  
23 So if I were called, I could do that. But I'm telling you  
24 that still my personal feelings are still there.

25 Q. The hesitation?

1 A. Uh-huh.

2 Q. Let's talk, then, about some of these Special  
3 Issues.

4 A. Okay.

5 Q. Special Issue No. 1 asks whether there is a  
6 probability that the defendant would commit criminal acts of  
7 violence that would constitute a continuing threat to  
8 society. That question starts out with a no answer and we  
9 have to prove to you beyond a reasonable doubt it should be  
10 answered yes.

11 A. Uh-huh.

12 Q. We do that by giving you new evidence, if  
13 there is -- or, obviously, you looking at the  
14 guilt/innocence evidence you have already heard and decide  
15 that. You are making a prediction of how the defendant will  
16 behave in the future. Do you feel you can answer that type  
17 of question?

18 A. Yes, definitely.

19 Q. What types of evidence -- what type of  
20 evidence do you think would be important to you in reaching  
21 that decision?

22 A. Um, see, here's -- okay. So this is the  
23 second phase of the trial, right? So background would  
24 definitely be important.

25 Q. Right. Okay. What about the facts of the

1 case itself?

2 A. Yes.

3 Q. Okay. What would be important about the  
4 background?

5 A. Well, whether this person is a habitual  
6 criminal.

7 Q. Okay. If they have committed crimes like this  
8 before?

9 A. Uh-huh or similar.

10 Q. And you feel that if we have proven that type  
11 of evidence to you, then you could answer that question yes?

12 A. Right.

13 Q. What does the word "probability" mean to you  
14 in the context of that question?

15 A. Um, chance.

16 Q. Okay. Just any chance at all that he would be  
17 a continuing danger?

18 A. Well, it's more of a positive to me.

19 Q. Okay. Anyway you could put a percentage on  
20 it?

21 A. On the word "probability"?

22 Q. Uh-huh.

23 A. Um, I don't know. Are you saying a percentage  
24 just on the word or on the whole --

25 Q. Just on the whole question?

1           A.       -- statement? So, for instance, what you are  
2 asking me is if I said that there's a 90-percent chance that  
3 the defendant would commit another crime. Is that how you  
4 --

5           Q.       Well, I'm just kind of asking you how you feel  
6 about it, because it's kind of an openended question. I'm  
7 just trying to get a feel on how you view the question.

8           A.       See, I feel like that's not openended.

9           Q.       Okay.

10          A.       I feel like it's definite. I mean, I know you  
11 are trying to foresee the future, but I also feel like if  
12 you have seen patterns --

13          Q.       A pattern in the past?

14          A.       Past patterns.

15          Q.       That's going to make the question pretty easy  
16 for you?

17          A.       Uh-huh.

18          Q.       The second question asks whether the defendant  
19 actually caused the death of the deceased or did not  
20 actually cause the death of the deceased, but intended to  
21 kill the deceased or another or anticipated that a human  
22 life would be taken. It gets kind of confusing. But that's  
23 what we're talking about where the law of parties comes in.

24          A.       Uh-huh.

25          Q.       It's an easy question if you believe from the

1 evidence that he actually caused the death. But the other  
2 part gets into if he's just a party or accomplice.

3 A. Right.

4 Q. Did not actually cause the death, but intended  
5 to kill the deceased or another. Maybe he intended to.  
6 Maybe someone else murdered the deceased before he had the  
7 chance or maybe that was his intentions or he just  
8 anticipated that a human life would be taken. Okay? He  
9 didn't pull the trigger, didn't cause the murder, but he  
10 anticipated based on the facts that a life would be taken.

11 Do you feel you can answer that question  
12 yes, depending on the facts of the case?

13 A. Depending on the facts of the case, yes.

14 Q. And if you believe that's true, that's what  
15 we're talking about, someone that's not a triggerman, they  
16 are a party to it, you would answer that yes?

17 A. Yes. Because intended to kill to me means  
18 they thought about -- I don't know if I -- I guess I would  
19 equate it to premeditated, if you intend to kill somebody.

20 Q. Intention can be formed in about a split  
21 second. When you are talking about premeditated, someone  
22 planned it out?

23 A. Well, nevertheless --

24 Q. Okay. You are comfortable with that?

25 A. Yes.



1 Q. And then this last Special Issue, if you take  
2 a moment to read that to yourself.

3 A. [Prospective juror complies.] Okay.

4 Q. That's the last question you get. It kind of  
5 -- no one has the burden of proof on it. It lets you look  
6 at everything in the person's background and the crime and  
7 decide if you think that a life sentence is appropriate,  
8 instead of a death sentence. Do you think that's a fair  
9 question to have?

10 A. Um, well, I do think it's a fair question, but  
11 that's in the punishment phase, correct?

12 Q. Uh-huh.

13 A. So I think it's a fair question.

14 Q. You don't get to that question until you have  
15 already found the defendant guilty beyond a reasonable doubt  
16 of capital murder, you have found he's a continuing danger  
17 to society, you found that he either caused the death or  
18 anticipated that a death would occur. That's all been  
19 proven to you beyond a reasonable doubt. Then you consider  
20 this question.

21 A. Uh-huh.

22 Q. Do you think that you could answer that  
23 question in a way that you could answer it yes, knowing all  
24 that and already made those findings? In other words, would  
25 you be able to sentence someone to a life sentence, even

1    though you thought he was guilty of capital murder, a  
2    continuing danger to society, and anticipated or intended  
3    someone to die, even if he wasn't the actual triggerman?

4           A.       Okay. I'm a little confused. So I thought  
5    you had said earlier that if the first two issues are  
6    answered yes, then it's definitely a death penalty.

7           Q.       It is if the last answer is a no. Now, if you  
8    answer that one yes, if there's mitigating evidence, then  
9    even though you answered those things, he gets a life  
10   sentence.

11          A.       Okay. Let me take a minute to reread it.

12          Q.       Okay.

13          A.       Okay. Could you put that in layman's terms  
14   for me?

15          Q.       That's a tough question. Basically, what it  
16   says is you can consider all the evidence, the crime itself,  
17   what the person's role in it was, anything about their  
18   character and background, the previous bad acts, if they  
19   have seen a bad pattern, or it could be maybe they had --  
20   well, we ask that question. Mitigating evidence can be  
21   anything you want it to be. It could be a person's  
22   background, how they were raised.

23          A.       So what does mitigating mean?

24          Q.       Something that lessens your moral culpability.  
25   But it's up to you and the other jurors. We can't even tell

1 you what it is. We just have to see if your mind's open to  
2 it. Some jurors have told us young age is mitigating.  
3 Someone in their early 20's or 19 years old, that could be  
4 mitigating. Other jurors say if they know what they're  
5 doing, no, it's not mitigating.

6 Some jurors -- a big question comes up is  
7 how a person was raised, their background. Maybe they had a  
8 -- maybe they were beaten, maybe they were abused mentally  
9 or physically, maybe they grew up in a poor neighborhood,  
10 maybe they didn't have a parent or father in the home.  
11 Other jurors tell us, I feel bad if they were abused as a  
12 child, but that's not an excuse once you grow up as an  
13 adult. A lot of people grow up in that situation and don't  
14 murder people.

15 How do you feel about that type of  
16 background evidence? Is that something that you view as  
17 mitigating or not?

18 A. Well, if you grew up as an abused person and  
19 you're an adult now, I feel like that you have had your  
20 adult years to turn yourself around.

21 Q. Okay. Is there anything as you sit here today  
22 that you might view as potentially mitigating evidence? Any  
23 other types of evidence? Anything come to mind?

24 A. Such as the background in their lives?

25 Q. Yes.

1 A. What would influence me?

2 Q. Yeah. Does anything strike you as potentially  
3 mitigating? I know you haven't sat around and thought about  
4 these issues, at least I hope you haven't. But --

5 A. Um, I guess not really. Because, you know, I  
6 just feel like that a person should get it by the time they  
7 are an adult.

8 Q. Fair enough. Some people actually tell us  
9 this. Look, if we have gone this far, if he's in my mind  
10 guilty and a continuing danger and did anticipate someone  
11 would die, then I'm not open to that question, to be  
12 perfectly honest, and I'm not going to answer that in a way.  
13 I mean, the death penalty is pretty much decided. Other  
14 people tell us, I'll keep my mind open to it. I'll listen  
15 to it. And if I think something is mitigating sufficiently  
16 where a life sentence is more appropriate, I will answer it  
17 that way. Other people, quite frankly, are closed to it  
18 once they have already made these other decisions.

19 How do you feel about that? Is this  
20 something that you can keep your mind open to, once you  
21 reach this stage?

22 A. I think that I can keep my mind open to it.  
23 You know, it all deals with the person and what he's gone  
24 through. Um, if he's an adult and still a habitual  
25 criminal, then I feel like he's had the opportunity to

1 straighten himself out in prison through the corrections  
2 system.

3 Q. Let me go into one other area now. One, we  
4 can't get into the facts, but, obviously, we ask about this  
5 case because it had a lot of news coverage.

6 A. Uh-huh.

7 Q. What do you remember? It's been a while, but  
8 what do you remember about the news coverage that you  
9 personally watched or read?

10 A. I remember the story about the police officer  
11 being slain and I believe it was Oshman's?

12 Q. Right.

13 A. I remember hearing interviews with the  
14 officer's -- either his wife or his mother, I can't remember  
15 which one, on the radio. I remember being on the lookout of  
16 the Texas Seven and talking about it maybe socially. Um, I  
17 remember when -- I think I remember when they got caught.  
18 It was in -- was it in Colorado? Or I'm not sure. North,  
19 instead of south. And I also remember that one of them  
20 committed suicide.

21 Q. Did you follow any of the other trials on the  
22 news?

23 A. I did not follow all of them. Although  
24 shortly after the May jury duty, I recall hearing that the  
25 previous five had all been sentenced to the death penalty.

1 Q. Obviously, in high publicity cases almost all  
2 the jurors have heard something about the case. The law is  
3 this, whatever you have heard you can't take that and let  
4 that affect your decision. Some jurors can do that and  
5 other jurors have read so much where it would affect their  
6 decision. They couldn't put it out of their mind. We just  
7 ask every juror individually how they feel about that.

8 Is what you have read or heard something  
9 that would affect your decision already or is it something  
10 that you can decide this case based on the facts and what  
11 you hear in the courtroom?

12 A. I think definitely decide it on the facts. In  
13 fact, I did not, intentionally did not go home and look on  
14 the Internet for more facts or more information.

15 Q. Okay. The fact -- when we talk about this  
16 mitigating question, the fact that we would be prosecuting  
17 the defendant under the theory of parties, that he's a  
18 nontriggerman --

19 A. Uh-huh.

20 Q. -- do you think that might potentially be a  
21 mitigating circumstance to you?

22 A. Um, that -- okay. Say that again, because we  
23 would have already decided in 2.

24 Q. You decided that he anticipated, you know,  
25 under the law of parties.

1 A. Right.

2 Q. But then other jurors have told us, I can  
3 answer question No. 2 yes, yeah, he anticipated, but when I  
4 look at this last question about what mitigation is, that's  
5 going to come into play if I don't think that he's the  
6 actual killer or he's not. He just anticipated. That might  
7 be a mitigating fact. Other people tell us that's not  
8 really the type of information I'm looking at.

9 A. Okay. I'm a little confused, because I feel  
10 like the -- I mean, to say it simplistically, that the  
11 nontrigger issue is addressed in No. 2 and not in No. 3.

12 Q. Okay. So -- and it's up to you because  
13 mitigation can be actually anything you want it to be as a  
14 juror.

15 A. Oh, okay.

16 Q. We can't tell you what it is. It's anything  
17 that you want it to be. And one juror might believe,  
18 actually, yeah, if he's just a party, an accomplice, a  
19 nontriggerman, that's going to be a mitigating issue to me.  
20 Other jurors might tell us, no, that's for the other  
21 questions. I'm not really interested in that, once I've  
22 reached that.

23 A. I'm not interested in that at that point.

24 Q. You feel that's satisfied?

25 A. Uh-huh.

1 Q. The bottom line, then, is you believe in the  
2 death penalty as a law?

3 A. Correct.

4 Q. You feel it should be prosecuted?

5 A. Yes.

6 Q. You feel that it should be prosecuted or be a  
7 law under the law of parties where they are the  
8 nontriggerman as a death penalty case?

9 A. Say that again, the last part of that.

10 Q. You agree the law says that a nontriggerman --

11 A. Yes.

12 Q. -- can be prosecuted under the law of parties  
13 and you agree with that law?

14 A. Yes.

15 Q. As best you know yourself, because you kind of  
16 have given me some different answers --

17 A. Right.

18 Q. -- as best you know yourself, if we prosecute  
19 and are prosecuting the defendant in this case under the law  
20 of parties, that if we prove to you beyond a reasonable  
21 doubt, you could find the defendant guilty, you could answer  
22 these questions in a way, yes, yes, and no, if the facts  
23 prove it to you, knowing that the defendant here, Mr.  
24 Murphy, will be executed some day, could you do that?

25 A. (Long pause) I hate to be so wishy-washy. I



1 know I could do it. But I would still have some innate  
2 hesitation.

3 Q. Do you think that hesitation would prevent you  
4 from answering those questions, then?

5 A. From answering those questions? Wouldn't  
6 prevent me from answering those questions, but it's the end  
7 result of the questions.

8 Q. Right. That's the sticky part.

9 A. I know that's difficult.

10 Q. Because we have to make a decision --

11 A. I know you do.

12 Q. -- based on your answers.

13 A. I know you do. I know you do. So that's me.  
14 That's what you get.

15 Q. When it comes down to the bottom line, as best  
16 you know yourself, then, is this a case that you can  
17 participate in or is that hesitation going to be something  
18 that's not going to leave you?

19 A. Well, you know, I vacillate mentally. If it's  
20 beyond a reasonable doubt, you know, I believe that I could  
21 do it. If it's not, I might be one of those that can't do  
22 it.

23 Q. Well, yeah. And I see you do vacillate. You  
24 are still struggling with it --

25 A. Uh-huh.

1 Q. -- and that's my concern.

2 A. Yes.

3 Q. Because from my position, obviously, I don't  
4 want someone over there that is like maybe in the middle of  
5 it go, look, this is not something that I can do,  
6 participate in it and take someone's life. And then at that  
7 point, obviously, there's not a thing we can do about it.  
8 You are just going to have to do it.

9 But that's why I keep asking you the  
10 bottom line. Because I see you struggling and the  
11 hesitation is still there.

12 A. Uh-huh.

13 Q. And that's what, quite frankly, worries me.

14 A. Uh-huh.

15 Q. But I just -- I just kind of want to, you  
16 know, it seems to me like that hesitation is probably not  
17 going to leave you, even though intellectually you might say  
18 certain things may be true and you sit there and look at  
19 someone that's been there for two weeks, seeing him sit  
20 there every day, it's something that is going to tug at you?

21 A. It would definitely tug at me. However, I  
22 wouldn't be human, if it didn't.

23 Q. Do you think that you could overcome that,  
24 then, or is it just a situation where, I don't know?

25 A. I don't know. It is I don't know. You know,

1 I feel like that it's hard to make a prediction on the way  
2 I'm going to feel without hearing all the evidence.

3 Q. Uh-huh. And unfortunately I can't preview all  
4 the evidence for you.

5 MR. SHOOK: Judge, I believe that's all  
6 the questions I have. Thank you.

7 THE COURT: You're only halfway through  
8 with this. Ms. Busbee has a few questions for you as well.

9 CROSS-EXAMINATION

10 BY MS. BUSBEE:

11 Q. And relax. You are not going -- Mr. Shook has  
12 covered the law so well that I just want to talk to you for  
13 a little bit.

14 A. Okay.

15 Q. Because we know your background and we know  
16 that despite the fact that you don't have a job in an  
17 office, it looks like you do a lot of different things.

18 A. Uh-huh.

19 Q. Could you tell me -- you were talking about  
20 volunteering at your school and I take it that's your kids'  
21 school and some of the things you are involved in?

22 A. Um, okay. Well, I'm very involved in their  
23 school. I have cafeteria duty once a week. My two older  
24 children are in college, so I don't do volunteer work  
25 associated them anymore. It's more with the littler one.

1 She's involved in theater. I do a lot of that and choir, a  
2 lot of parental help with that. She's busy with dancing and  
3 singing and volleyball. And I'm probably what you would  
4 call a soccer mom, even though soccer is not in our realm.

5 Q. You are as busy as?

6 A. Yes.

7 Q. I just wanted to get you away a little bit  
8 from asking you these same questions in different ways,  
9 because you sit through one of these and you realize why  
10 people hate lawyers, because we're trying to make you split  
11 hairs that we just introduced you to.

12 I mean, to me I think that this is --  
13 that you have answered this question, but I want to get away  
14 from asking it over and over so we could kind of have a  
15 fresh start.

16 I hear you say that this would be a very  
17 serious duty to you?

18 A. Yes.

19 Q. And that shouldn't bother any of us, because,  
20 obviously, it's a very serious proceeding since we're doing  
21 it in this manner with all these jurors and the law is as  
22 complex as any criminal law that I'm aware of. The courts  
23 say that these laws must be very, very specific. And in  
24 order to give a death penalty, it's a very limited  
25 individual that deserves the death penalty and they limited

1 it so that they can be comfortable with the jurors' decision  
2 to give or to assess a death penalty.

3 And so, essentially, I've heard this  
4 described as hurdles to jump over. Assuming that the person  
5 has been found guilty of capital murder as a party, I don't  
6 think we have any problem with Special Issue No. 1.

7 A. Right.

8 Q. Even anticipating that an answer of yes to  
9 that may result in the death penalty, you wouldn't have any  
10 trouble answering that question?

11 A. No.

12 Q. Now, on Special Issue No. 2, I hear you  
13 saying, all of this is hard, but if it's proved to me beyond  
14 a reasonable doubt, I can answer yes.

15 A. Right.

16 Q. So they have to prove it to you beyond a  
17 reasonable doubt, so I'm hearing you saying you can follow  
18 the law?

19 A. Yes.

20 Q. Here's -- Special Issue No. 3 is described by  
21 some of us as -- mitigating, I don't know what that is. And  
22 sometimes we go into children and that sort of thing and you  
23 have the same attitude that I have and most people have.  
24 Come on, you now, you're an adult. Get counseling and get  
25 over it. Don't inflict it on the rest of us.

1 A. Uh-huh.

2 Q. But I like to call it a safety valve. And  
3 it's just like Mr. Shook described to you, you don't have to  
4 be able to say, there's just this one thing that makes me  
5 say that even though I have answered 1 and 2 yes, I don't --  
6 I'm going to answer this yes as well. But even though 1 and  
7 2 have been proven to me beyond a reasonable doubt, I still  
8 think that this individual should not receive the ultimate  
9 penalty of death.

10 And you don't have to -- you know, nobody  
11 is trying to commit you to that because it may be something  
12 that you, yourself, can't express, a feeling that you have.  
13 Usually there's a reason for it. I assume that since you  
14 will be careful on Special Issues No. 1 and 2 that you are  
15 going to have a reasoned reason, if that makes any sense,  
16 for Special Issue No. 3. I feel that even though I have  
17 found 1 and 2 to be true beyond a reasonable doubt, I don't  
18 believe a death penalty should be imposed in this case.  
19 It's just a safety valve. Do you understand?

20 A. I understand what you are saying. But I  
21 thought if 1 and 2 -- okay, so if 3 is answered --

22 Q. It sort of says, but anyway --

23 A. Anyway life instead of death.

24 Q. Right.

25 A. Okay. So --

1 Q. It's awkward.

2 A. So tell me your question.

3 Q. Well, can you do that?

4 A. Can I do No. 3?

5 Q. Yes, ma'am. Either way. I mean, having found  
6 Special Issue 1 and 2 true, you then get to the third issue  
7 which is even though I do believe the other two things  
8 beyond a reasonable doubt, I still feel -- and this is -- of  
9 course, I can't give examples. But I still believe that  
10 there should be a life sentence instead of death.

11 A. Well, I feel like if the defendant intended to  
12 kill the deceased, that that would warrant the death  
13 sentence.

14 Q. Okay. So I think what you are telling me is,  
15 if you answered yes to Special Issue No. 1 and Special Issue  
16 No. 2, there would be nothing that would make you opt to  
17 answer yes to question 3, yes being the answer that would  
18 cause it to be a life sentence?

19 A. Right. Well, I tell you what, if this person  
20 were just an outstanding citizen --

21 Q. And you don't even have to articulate what  
22 your reasons might be, just that you would seriously  
23 consider Special Issue No. 3 and if you felt that that  
24 person should not get death, you would vote that way?

25 A. Okay. Um, let me focus more on this, again,

1 for a minute.

2 Q. Sure.

3 A. Previously, I was concentrating just on those  
4 two, the first two issues, and probably not giving enough  
5 emphasis to No. 3 and that's really important. Um, but I  
6 still feel strongly. I have to say I feel strongly -- I  
7 think that I would, if the first two were proved without,  
8 you know, beyond a reasonable doubt, that No. 3 would impose  
9 the death sentence.

10 Q. So you couldn't answer yes to No. 3 if you had  
11 found 1 and 2 beyond a reasonable doubt? It's not a  
12 character flaw on your part. It's just how you --

13 A. Right.

14 Q. -- are personally.

15 A. Right. Well, I'm trying to figure that out  
16 right now.

17 Q. It's hard to explain for me and it's even  
18 harder for someone who has never seen it before, so I  
19 understand.

20 A. Um, and it's just so difficult, since I've  
21 never been on a jury before, to --

22 MR. SHOOK: Judge, we have an agreement.

23 MS. BUSBEE: We've decided not to torture  
24 her anymore.

25 THE COURT: All right. Ms. Lawson, I bet



1 when you came down here this morning you had no idea how  
2 complicated the law really is.

3 PROSPECTIVE JUROR: I had no idea.

4 THE COURT: You have learned more today  
5 than you probably have ever watching TV, read about in  
6 school, or whatever. We appreciate your honesty. Trust me,  
7 the lawyers would rather have your honesty and talk to you  
8 for an hour and a half and say we're going to let you go,  
9 than you hide the ball and not be honest.

10 We appreciate it. You are excused from  
11 your jury service. And you can tell your children what you  
12 learned today. Please give the guide back to the Sheriff.  
13 And we'll take a short break.

14 (Recess)

15 [Prospective juror out]

16 THE COURT: Mr. Shannon, please.

17 [Prospective juror in]

18 THE COURT: Good morning, Mr. Shannon,  
19 how are you?

20 PROSPECTIVE JUROR: Pretty good.  
21 Yourself?

22 THE COURT: Doing pretty good, trying to  
23 get the courtroom cooled off a little bit, but that's about  
24 normal for the county. You have had enough time this  
25 morning to read the orientation guide?

1 PROSPECTIVE JUROR: Yes, I have.

2 THE COURT: View the witness list?

3 PROSPECTIVE JUROR: Right.

4 THE COURT: The potential witnesses that  
5 may be called? Do you have any problem serving this Court  
6 with the scheduled November 10th trial date?

7 PROSPECTIVE JUROR: Yeah, I read that.

8 THE COURT: Would you have any problem  
9 serving the Court?

10 PROSPECTIVE JUROR: No, no.

11 THE COURT: I know that we have given you  
12 a lot of law to think about in the handout. Do you have any  
13 questions of me about the law we'll be talking about here  
14 today before we begin?

15 PROSPECTIVE JUROR: No.

16 THE COURT: I'm quite sure the lawyers  
17 are going to spend a lot of time with you. You are still  
18 under oath to tell the truth. That's all we ask. Don't  
19 worry about what it is, just, you know, this is what I  
20 think. This is what I believe. The lawyers will appreciate  
21 that and we'll proceed forward from there. With that, I'll  
22 turn it over to Mr. Wirskye.

23 MR. WIRSKYE: May it please the Court.

24 DAVID SHANNON,

25 having been duly sworn, was examined and testified as

1 follows:

2 DIRECT EXAMINATION

3 BY MR. WIRSKYE:

4 Q. Mr. Shannon, how are you?

5 A. Very good.

6 Q. Again, my name is Bill Wirskye and I'll be the  
7 prosecutor that's going to be visiting with you for the next  
8 few minutes. It looks like on your questionnaire you may  
9 have gone through this once before; is that right?

10 A. That's correct.

11 Q. Well, I don't know how much you remember. Was  
12 it '94, '95?

13 A. I don't remember. It's been a while ago.

14 Q. Ultimately, you didn't end up making the jury;  
15 is that right?

16 A. That's correct.

17 Q. But you did come down and talk to both  
18 lawyers?

19 A. Right.

20 Q. Again, we apologize. It makes a lot of people  
21 feel they are on trial because they are sitting up there on  
22 the witness stand, but it's kind of the best system that we  
23 have.

24 I'll talk to you a little bit briefly  
25 about some of the answers in your questionnaire, get some of

1 your thoughts on the death penalty, and then we'll talk more  
2 specifically about some of the legal aspects that may apply  
3 and hopefully your previous experience will help you through  
4 this and make it a little bit shorter for you.

5 A. Okay.

6 Q. You told us that you do believe in the death  
7 penalty; is that right?

8 A. That's correct.

9 Q. Is that something that you have believed in  
10 all your life?

11 A. Pretty much, yeah.

12 Q. What value do you see to, I guess, our  
13 society, having a death penalty?

14 A. Get rid of criminals, people that break the  
15 law.

16 Q. When you think about an appropriate-type case  
17 for the death penalty, is there a particular type case that  
18 comes to mind?

19 A. Murder.

20 Q. Okay. Any particular case you may have heard  
21 or read about or high profile case that when you think about  
22 it, you think to yourself, gee, that's a good candidate or a  
23 good case for the death penalty?

24 A. The one that I was called on previously.

25 Q. Okay. And looks like you ended up following

1 that?

2 A. Right.

3 Q. At least through the paper?

4 A. Yes, sir, sure did.

5 Q. And saw the end result?

6 A. I saw that it was pretty colorful.

7 Q. And you saw how -- I guess the defendant in  
8 that case acted up a little bit?

9 A. Yes, he did.

10 Q. Do you hold that belief so strongly that, you  
11 know, that you would say there's never a murder case where  
12 maybe a life sentence would be more appropriate other than  
13 the death penalty?

14 A. Pretty much.

15 Q. Okay. When you say pretty much, I guess is  
16 there certain cases out there -- again, this is your  
17 personal feelings. We're not talking about the law. Some  
18 cases out there where you may think, you know, death is a  
19 little extreme for that particular person or for that  
20 particular crime? Sounds like you are at least open to the  
21 possibility?

22 A. Okay. I'm not going to say no to that.

23 Q. Okay. As you may remember from last time, if  
24 you do make the jury in a capital case, we don't ask the  
25 jury just to answer the question, you know, should the

1 defendant get a life sentence or should the death penalty be  
2 imposed?

3 What we do is, we ask the jurors -- if  
4 they convict someone of capital murder, we ask the jurors to  
5 answer these three questions. They are called Special  
6 Issues, but they are basically questions. And depending on  
7 the answers to those questions, that determines whether the  
8 defendant is actually sentenced to death. I don't know if  
9 you recall that --

10 A. I don't.

11 Q. --- almost ten years ago?

12 A. Right.

13 Q. But it's not a situation that we ask you as a  
14 juror to kind of give a thumbs up or thumbs down on the  
15 death penalty. We just give you these questions. Depending  
16 on the answers to those questions, that determines the  
17 appropriate sentence in a case. Does that sound fair to  
18 you?

19 A. Right.

20 Q. Okay. We talked to you just a little bit  
21 about this. You know, oftentimes crimes aren't committed by  
22 just one person. You know, we think about a murder case, we  
23 think about one guy maybe going into a 7-Eleven, robbing the  
24 clerk, pulling the trigger, killing him during a robbery.  
25 But oftentimes crimes are committed by groups or gangs of

1 people, that type of thing.

2 The law allows us in those cases to  
3 actually prosecute for the death penalty, depending on the  
4 facts and circumstances, people that didn't actually pull  
5 the trigger, nontriggermen. That's that the law in Texas  
6 allows us to do.

7 How do you feel about that, just off the  
8 top of your head?

9 A. I don't have a problem with that.

10 Q. Very frankly, we talk to some people that come  
11 down here and they say, you know, I believe in the death  
12 penalty for the person that pulled the trigger. But when  
13 you start talking about people who are accomplices or who  
14 are helping out in the offense who didn't pull the trigger,  
15 for those people I take the death penalty completely off the  
16 table.

17 But you sound like you would be able to  
18 follow the law and at least be able to consider the death  
19 sentence as an appropriate punishment for a person that  
20 didn't actually pull the trigger; is that right?

21 A. That's correct.

22 Q. And I'll be honest with you and lay all the  
23 cards right out on the table. In this case we don't  
24 anticipate the evidence will show that he pulled the  
25 trigger. We're prosecuting him as an accomplice or a party

1 to the offense, is what we call it in Texas.

2 But sounds like you have no hesitations  
3 going into a trial of that nature, being able to answer  
4 these questions and follow the law; is that right?

5 A. That's correct.

6 Q. Let me talk to you a little bit about the  
7 publicity in this case. Just based on what you heard back  
8 in May when you came down, thinking about the case, showing  
9 up today, do you think that you may have heard anything  
10 about this case?

11 A. No.

12 Q. Okay. You have no idea why we're down here or  
13 any particular facts, haven't heard anything in the media or  
14 anything like that?

15 A. Since it happened or since I came down?

16 Q. Uh-huh.

17 A. No.

18 Q. Okay. But did you hear anything back when the  
19 crime is alleged to have occurred?

20 A. Yes.

21 Q. Back in December, 2000?

22 A. Right.

23 Q. About the murder of a police officer over by  
24 Oshman's?

25 A. Right.



1 Q. Okay. Obviously, in cases like this that are  
2 high profile cases, almost everyone we talk to has heard  
3 something about the case. And that does not necessarily  
4 mean you are disqualified or can't be a fair and qualified  
5 juror. What the law says is, you know, despite what you may  
6 have heard or read or seen on TV, that type thing, as long  
7 as you can kind of base your decision in the case just on  
8 the evidence and facts that you hear in the courtroom, you  
9 would still be a qualified juror and be able to sit.

10 And, you know, we talk to a lot of people  
11 and, very frankly, some of them tell us they can't do that.  
12 They say, you know, I may have heard so much about this  
13 case, you know, I've already formed an opinion and I can't  
14 base my verdict just on what I hear in the courtroom.

15 Kind of where do you fall in that? Do  
16 you think that you would be able to base your verdict on  
17 just what you hear in the courtroom?

18 A. Yes.

19 Q. Okay. No problem just listening to the facts  
20 and the evidence and deciding whether the person is guilty  
21 and then answering those three questions or anything like  
22 that?

23 A. No problem.

24 Q. Okay. Do you have your juror guide up there  
25 in front of you? Did you bring it in?

1 A. Juror guide? No, I did not.

2 Q. Okay. Fair enough. Just to kind of give you  
3 a brief overview. What we do in these cases, is basically  
4 the trial is broken down into two parts. If you can flip to  
5 the very back of the last page on there, there should be a  
6 copy of something called the indictment. If you can just  
7 look at that real briefly.

8 A. Okay. I'm looking at it.

9 Q. That's basically what we've charged in this  
10 case. We have kind of charged that capital murder has been  
11 committed two different ways, one, that a police officer was  
12 killed during the course of his duties; the second way would  
13 be that an intentional killing happened during the course of  
14 a robbery. If we prove one or prove either or both to a  
15 jury beyond a reasonable doubt, which is our burden, then  
16 the law would require the jury to find the defendant guilty.

17 And that's basically the first part of  
18 the trial. You hear the facts and evidence, just basically  
19 about the case, what happened out there, and it's up to a  
20 jury to decide whether we have met our burden and proven  
21 beyond a reasonable doubt whether the person is guilty.

22 Does that make sense to you?

23 A. Yeah.

24 Q. Okay. If we do that, then we slip into the  
25 second phase of the trial. And during the second phase of

1 the trial the rules of evidence kind of broaden out a little  
2 bit. You get to hear more facts about the man, the person,  
3 you know, background, character, that type of thing. May  
4 have been a real bad guy. May have been a real good guy.  
5 But you get to hear that extra or additional evidence to  
6 help you answer these Special Issues. Does that make sense  
7 to you?

8 A. Right.

9 Q. Again, the fact that you may have found  
10 somebody guilty of capital murder does not necessarily in  
11 and of itself or automatically help jurors answer any of  
12 these three Special Issues. Does that make sense?

13 A. Yes.

14 Q. Okay. We ask jurors, even though you found  
15 the person guilty of capital murder, to step back and answer  
16 each of these issues independently. Don't do anything  
17 automatically. Go back and take a fresh look at all the  
18 evidence you have heard and decide what the answers to these  
19 questions should be.

20 And just briefly, if you look up there,  
21 question No. 1, whether the person is going to be a future  
22 danger to society, basically. And we'll talk more about  
23 that in a second. We have the burden of proving that to a  
24 jury beyond a reasonable doubt, just like we did guilt. And  
25 if we meet that burden and the answer to that question is

1 yes, you move on to Special Issue No. 2.

2 And this question kind of deals with what  
3 we've already talked about, you know, did the person  
4 actually pulled the trigger, was a nontriggerman. That's  
5 kind of what Special Issue No. 2 deals with. It's easy to  
6 answer that question if the person on trial actually pulled  
7 the trigger. If they didn't, like the case we're here on  
8 today, a nontriggerman, the jury would need to decide that  
9 the person intended that person to be killed or anticipated  
10 that a life would be taken.

11 Again, it's our burden to prove that to  
12 you beyond a reasonable doubt. If the answer is yes, then  
13 you move on to the Special Issue No. 3. It's kind of the  
14 safety net.

15 No. 3 is a little bit different than 1  
16 and 2 in that there's no burden of proof. It's just up to  
17 the jurors. It's kind of the, like I said, the catch-all  
18 safety net. Step back, take a deep breath, see if there's  
19 anything mitigating, such that a person's life should be  
20 spared and they shouldn't face the death penalty. Does that  
21 scheme kind of make sense --

22 A. Yes.

23 Q. -- to you? And, again, you know, just because  
24 you found someone guilty of capital murder, you don't  
25 automatically or necessarily answer those questions any

1 particular way. We want jurors who can be fair and keep  
2 that open mind and really work through each of these  
3 questions, looking at the evidence.

4 Do you think that you are the type of  
5 person that could do that?

6 A. Yes.

7 Q. Okay. Let's look a little bit at Special  
8 Issue No. 1. Again, this is the question that deals with  
9 whether a person would constitute a continuing threat to  
10 society. There's a couple of terms in that question that  
11 really aren't defined. Unlike a lot of things the lawyers  
12 do, we don't have specific definitions for those terms. I  
13 think it's because it's probably pretty much a common sense  
14 question when you look at it. But when you see that word  
15 "probability", just off the top of your head, what does that  
16 mean to you?

17 A. Well, whether, I guess, he's going to commit a  
18 -- probably do it again, do something just as violent.

19 Q. Uh-huh. I think, you know, when we look at  
20 probability, more likely than not, I think. You know, we  
21 don't have to prove to you that it's going to happen. You  
22 know, obviously we could never do that. That question kind  
23 of asks a juror, I guess, to make a prediction about future  
24 behavior or future events.

25 Is that something you feel comfortable

1 with, making that prediction, you know, having sat through  
2 the guilt part of the trial and having sat through the  
3 second part of the trial, the punishment phase, is that  
4 something that you think you can do?

5 A. Yeah.

6 Q. Then we have that phrase "commit criminal acts  
7 of violence." I'm just curious what that means to you,  
8 "criminal acts of violence"?

9 A. I guess if he had the opportunity to do it, he  
10 would do it again.

11 Q. Any particular crime that strikes you when  
12 we're talking about a criminal act of violence? I mean,  
13 obviously, another murder or rape or something like that?

14 A. Right.

15 Q. The law doesn't necessarily define it, again.  
16 It's just whatever a juror thinks would constitute a  
17 criminal act of violence. Could be an assault or threat,  
18 something like that. Does that make sense to you?

19 A. Yes.

20 Q. I guess the bottom line is, you know, I don't  
21 want you to think that we have to prove there's a high  
22 probability that he would kill again or participate in  
23 another murder. Does that make sense to you?

24 A. Right.

25 Q. Then, finally, the last word in that question

1 talks about society. I'm just curious how you would define  
2 "society" or if you put any limits on it as between people  
3 out here in the free world or people locked up behind bars  
4 or how would you define that?

5 A. It's, obviously, going to be a criminal  
6 society, incarceration.

7 Q. Okay. So you would define it very broadly to  
8 include people like prison guards, ministers that work in  
9 prisons, that type thing?

10 A. I don't guess that you can throw out the  
11 probability of escape again. So you would have to -- this  
12 is society out here and society in incarceration.

13 Q So you define it broadly to include everybody?

14 A. Right.

15 Q. Okay. Does that question make sense to you?  
16 Do you kind of see why the law asks jurors to look at it?  
17 And I'll tell you why I ask that question. We have some  
18 people down here who come down and, you know, if they found  
19 somebody guilty of capital murder, by the time we get to  
20 that second phase of the trial, their mind is closed. It's  
21 kind of shut down. They are not really going to work  
22 through these questions.

23 And they tell us, you know, gee,  
24 Mr. Wirskye, if I find somebody guilty of capital murder,  
25 the triggerman or nontriggerman, by the time I get to

1 Special Issue No. 1, that's automatically answered for me.

2 If I find somebody guilty of that act, it's automatic. I'm  
3 going to answer it yes every time.

4 What the law says is, again, you can't do  
5 it automatically. You have to take that fresh or that  
6 independent look at Special Issue No. 1. You know, you are  
7 certainly allowed to go back and look at the facts of the  
8 offense to help you make that decision. You just can't do  
9 it automatically. It has to be a separate, independent  
10 inquiry for each question. Does that make sense to you?

11 A. Yeah.

12 Q. Do you think, even having found somebody  
13 guilty of capital murder, either as a triggerman or  
14 nontriggerman, by the time you got to Special Issue No. 1  
15 you would still have an open mind? You would work through  
16 that question and you wouldn't just automatically answer it  
17 yes?

18 A. Yeah, I think I could.

19 Q. Okay. You keep that open mind, take a fresh  
20 look. You wouldn't have any problem with that? It wouldn't  
21 be automatic?

22 A. No.

23 Q. Again, we have the burden of proof to you on  
24 that question. We have got to prove it to you just like we  
25 did his guilt with evidence beyond a reasonable doubt. If



1 the answer to that question is yes, we move on to Special  
2 Issue No. 2.

3 Again, like I said, this is the question  
4 that deals with, you know, when people act in gangs or  
5 groups, who's the triggerman, who's not the triggerman?  
6 Obviously, if you think that he actually pulled the trigger  
7 and killed the person, that's an easy answer. Okay? The  
8 answer would be yes.

9 But, again, I've told you what our cards  
10 are that we laid them outside on the table for you. We're  
11 prosecuting him as a nontriggerman or as an accomplice. So  
12 it would be up to you as a juror to decide whether we have  
13 proven to you beyond a reasonable doubt that he intended a  
14 human life to be taken or that he anticipated that a human  
15 life would be taken. Does that make sense to you?

16 A. Yes.

17 Q. Okay. Just to back up for just a second, when  
18 you find somebody guilty of capital murder as a  
19 nontriggerman, okay, you either have to decide that he  
20 helped out the person that pulled the trigger, knowing, you  
21 know, helped him commit the capital murder or you have to  
22 decide that he should have anticipated that a human life  
23 would be taken. Okay? That's the standard, should have  
24 anticipated in order to convict someone of capital murder.

25 By the time we get to punishment, the law

1 imposes a little bit higher burden on us and instead of  
2 should have anticipated, the question becomes, did they  
3 actually anticipate? You can kind of see the difference  
4 between those two?

5 A. Yeah.

6 Q. Okay. Let's say Mr. Shook and I go in to do a  
7 bank robbery. He's carrying three fully loaded guns and I  
8 know him to be an angry and violent person. And we go in  
9 there and something goes wrong. He gets mad and he shoots  
10 and kills someone. He's the triggerman. He's committed  
11 capital murder.

12 If the jury finds that I should have  
13 anticipated that a human life could be taken, they would  
14 find me guilty as an accomplice or conspirator to capital  
15 murder. And if they found me guilty and we got to Special  
16 Issue No. 2, then the jury would have to decide not only  
17 should I have anticipated, but did I actually anticipate?  
18 See the difference?

19 A. Yes.

20 Q. Just a little higher burden before we impose  
21 the death penalty. I want to make sure that you see kind of  
22 the meaningful distinction between should have and actually  
23 did. Does that make sense to you?

24 A. Yes.

25 Q. Okay. But if you look at something like that

1 and, again, it's up to us to prove it to you beyond a  
2 reasonable doubt and you answer that question yes, you move  
3 on to Special Issue No. 3.

4 Special Issue No. 3, again, is a little bit  
5 different. Neither side has the burden of proof. It's kind  
6 of the last stop in the process of a death penalty, because  
7 at this point you have found him guilty of capital murder,  
8 you said he's going to be a future danger, you said he  
9 either pulled the trigger or he anticipated or intended that  
10 somebody would be killed. And this is the last question.  
11 It kind of requires you to take a deep breath, take a step  
12 back, and look at everything you have heard, the facts of  
13 the offense, everything that you may have learned about him,  
14 and ask yourself, is there anything that is mitigating and  
15 if there is, is it sufficiently mitigating that his life  
16 ought to be spared? Does that make sense to you?

17 A. Yeah.

18 Q. And, again, we talk to some people who would  
19 tell us, very frankly, by the time I get to Special Issue  
20 No. 3, my mind is closed. They tell me, Mr. Wirskye, I  
21 found him guilty of capital murder, I said he's going to be  
22 a danger, I said he pulled the trigger, that he intended or  
23 anticipated, and by the time I get to Special Issue No. 3,  
24 that's really no value in that question for me. Okay? By  
25 the time we get that far in the process, it's over. I'm not

1 going to work through that question. I'm not going to make  
2 that independent inquiry. I'm just going to automatically  
3 answer it no, such that he would get a death penalty.

4 And we've talked to a lot of people like  
5 that. But I want to make sure before we go on that you are  
6 not one of those people, very frankly, that you do see some  
7 value and some meaning to Special Issue No. 3, and if you  
8 have got there, that you could go back and look at  
9 everything else and see if there was anything mitigating in  
10 the background or the crime to where his life ought to be  
11 spared. Does that make sense to you?

12 A. Yes.

13 Q. Do you think that you could do that?

14 A. Yeah.

15 Q. Okay. Your mind wouldn't be closed at that  
16 point? That question No. 3 would still have some value to  
17 you?

18 A. Right.

19 Q. Okay. When you talk about mitigating  
20 evidence, the law doesn't really define what mitigating is.  
21 You know, a lot of people talk about reducing the moral  
22 blameworthiness, you know, what blame does a person bear?  
23 The law doesn't require that you consider any particular  
24 thing mitigating.

25 You know, we talk to some people who say,

1 well, if the person was young, he was 19 or 20, to me that's  
2 mitigating. Some people say, you know, by 19 or 20 you  
3 ought to know right from wrong. You ought to be held  
4 responsible for your actions. I don't consider that  
5 mitigating. And there can be a difference of opinion. Even  
6 the jurors don't have to agree on what may be mitigating.  
7 Does that make sense to you?

8 A. Yeah.

9 Q. Okay. Anything off the top of your head  
10 strike you as something that may be mitigating?

11 A. No.

12 Q. Okay. And that's the answer we most commonly  
13 get. Hopefully, you know, people don't sit around thinking  
14 about what would be mitigating in a death penalty case. And  
15 the law doesn't require you to think of something right now.  
16 It just requires that you keep that open mind and,  
17 basically, it requires that when you get to that question,  
18 you say, I have an open mind. If I hear something that I  
19 think is mitigating, I'm going to think about it and I'm  
20 going to go back and look at this question and answer that  
21 question honestly and independently. Does that make sense?

22 A. Yes.

23 Q. Okay. So your mind is not closed to  
24 mitigation?

25 A. No.

1 Q. Okay. You recognize the possibility there  
2 could be something mitigating?

3 A. Yes.

4 Q. Okay. It may be slim and it may be slight,  
5 but as long as you can keep that open mind, you would be a  
6 qualified juror. As long as you can follow the law, you  
7 would be a qualified juror. That's kind of what you are  
8 telling me you can do; is that right?

9 A. Yes.

10 Q. Do you have any questions about any of these?

11 A. No.

12 Q. Mr. Shannon, I know that I'm kind of running  
13 through it pretty quick, but I kind of feel like even though  
14 it was ten years ago, this is the second time that you have  
15 heard this. Again, all it boils down to is being able to  
16 keep that open mind, follow the law, you don't do anything  
17 automatically, take a fresh look at each question, and you  
18 told me you shouldn't have any problem doing that; is that  
19 right?

20 A. That's correct.

21 Q. Okay. Let's talk a little bit about the type  
22 witnesses you may hear. I think you indicated in your  
23 questionnaire you may have had a brother who's a police  
24 officer; is that right?

25 A. That's correct.

1 Q. Where was he a police officer?

2 A. In Grand Prairie.

3 Q. How long was he an officer?

4 A. Um, maybe 11 or 12 years as a reserve. He  
5 worked for the Dallas County Boys Homes actually.

6 Q. The fact that you have somebody in your family  
7 close to you, a brother that was a police officer, do you  
8 think that would have any bearing on your ability to be fair  
9 in this case?

10 A. Shouldn't, no.

11 Q. Okay. Obviously, we have alleged a police  
12 officer has been murdered in this case. I just want to make  
13 sure that that, you know, wouldn't weigh into your  
14 consideration at all, your personal experience or friendship  
15 or anything like that?

16 A. No.

17 Q. What the law, basically, says is that no  
18 matter what type witness comes in here, be it a police  
19 officer, doctor, or anything else, the jurors kind of have  
20 to start them out at that same level of credibility. Does  
21 that make sense to you?

22 A. Yes.

23 Q. You can't give them a leg up just because they  
24 walk in wearing a gun and a badge. You know, once they  
25 start testifying, you may want to give them more

1 credibility. You may want to give them less credibility.  
2 But you have got to start everybody out at the same level,  
3 including police officers. And it doesn't look like it  
4 would be a problem for you at all?

5 A. No.

6 Q. Typically in these type cases you may hear  
7 from psychiatrists or psychologists. Either side may call  
8 them. So it's kind of important that we, you know, talk to  
9 you and get your thoughts about what you think about that  
10 type of evidence, mental health professionals.

11 We talk to a lot of people in these cases  
12 and I guess they kind of break down into three different  
13 groups. You know, you have got the people that come in and  
14 say, you know, I don't trust them as far as I can throw  
15 them. They are worthless. I'm not going to listen to a  
16 word out of their mouth. You have got the opposite end of  
17 the spectrum, you know, they think they walk on water. No  
18 matter what --

19 A. Put me right in the middle.

20 Q. And that's what the law anticipates. That's  
21 what the law envisions. You have people right in the  
22 middle. Start them out on that same level. If they make  
23 sense, give them credibility. If they don't, just disregard  
24 their testimony. Does that make sense to you?

25 A. Yes.



1 Q. We have kind of touched on this already and  
2 you have been down here before, but, obviously, we have the  
3 burden of proof at this table. We have got to prove to you  
4 his guilt beyond a reasonable doubt and Special Issue 1 and  
5 2. This side and, obviously, they have a different view of  
6 the evidence than we do. But they never have the burden and  
7 the burden never shifts. Does that make sense to you?

8 A. Yes.

9 Q. Okay. And he's presumed innocent. As he sits  
10 here right now, you know, if the trial is over right now,  
11 you would be required to vote not guilty. You haven't heard  
12 any evidence. You know, that presumption of innocence  
13 attaches right now and legally he sits there an innocent  
14 man. Does that make sense to you?

15 A. Yes.

16 Q. Okay. As part of those, the presumption of  
17 innocence and our burden of proof, you know, we have to  
18 prove each and every element of the offense. Okay? That's  
19 that indictment you read, you know, the two paragraphs?

20 A. Right.

21 Q. They're broken down into different elements of  
22 the crime. You know, we have to prove on a certain day --  
23 on or about a certain day in Dallas County a certain person  
24 was killed a certain way, that type thing.

25 I'll give you a crazy hypothetical we throw

1 out sometimes. We talk to a lot of people about this. You  
2 know, let's say our indictment said that a person was  
3 stabbed to death. Okay? And it gets to trial and you  
4 listen to the evidence. The medical examiner comes in and  
5 surprises the DA who don't do our homework and he says, he  
6 wasn't stabbed. He was shot. That's what killed him.  
7 Okay? Then we missed an element of our crime.

8 A. Yeah.

9 Q. You may not like it. You may be mad at us.  
10 I'd be fired and out of a job, if I was that negligent. But  
11 under the law you would be required to find the defendant  
12 not guilty, because we failed to prove an element to you  
13 beyond a reasonable doubt.

14 A. Right.

15 Q. Does that make sense?

16 A. Yes.

17 Q. A lot of people consider it a technicality,  
18 but it really is important. We have to prove, you know,  
19 each and every one. We can't go nine for ten. You know, we  
20 have to go ten for ten. Does that make sense to you?

21 A. Yes.

22 Q. Okay. Another example we use sometimes, I  
23 know you have at least some contact with Grand Prairie, but  
24 some of it is in Tarrant County and some of it is in Dallas  
25 County. We allege that a murder happened in the Dallas

1 County part of Grand Prairie. It comes to trial and the  
2 evidence is it happened in Tarrant County. Again, that  
3 county is an element. We didn't prove it, you would have to  
4 say not guilty. You may not like it. We're going to get  
5 fired, but do you think that you can do that?

6 A. Oh, yeah.

7 Q. Okay. No problem along those lines?

8 A. No.

9 Q. Again, the defendant has the absolute right  
10 not to testify, his Fifth Amendment right. He doesn't have  
11 to testify. No one can force him to. No one can keep him  
12 off the stand, if he wants to. The important thing to  
13 remember is that you can't hold that against him, if he  
14 didn't testify. You can't consider it, can't talk about it  
15 back there, and it's really just another way of holding us  
16 to our burden of proof. Does that make sense to you?

17 A. Yes.

18 Q. Let me talk to you a little bit about things  
19 called lesser included offenses, okay, lesser included  
20 offenses. Basically, what that is, is sometimes in a case,  
21 you know, the upfront guilt part of the case, jurors may  
22 have different options. You maybe convict him of capital  
23 murder, convict him of the lesser included offense of  
24 murder, or find him not guilty. So murder would be a lesser  
25 included offense of capital murder. Does that make sense to

1 you?

2 A. Yeah.

3 Q. Say we prove the person caused the death, but  
4 they weren't a police officer.

5 A. Would you repeat that again?

6 Q. Hold on just a second.

7 A. Your question before that was murder is less  
8 than capital murder, right?

9 Q. Uh-huh.

10 A. Okay.

11 Q. They're called lesser included offenses.  
12 Murder would be a lesser --

13 A. Lesser than capital.

14 Q. -- included of capital murder. If you allege  
15 murder in the course of robbery, robbery would be a lesser  
16 included offense of murder.

17 A. Right.

18 Q. Say the person did the robbery, but they  
19 didn't actually cause the death, so aggravated robbery could  
20 be a lesser included, too.

21 A. Okay.

22 Q. What the law says is that we need to make sure  
23 that all the potential jurors are qualified and can keep an  
24 open mind to the full range of punishment for any possible  
25 lesser included offenses that could come up, whether it be

1 murder or aggravated robbery or that type thing.

2 I'll just ask you now, talking about the  
3 lesser included of robbery, aggravated robbery, the  
4 punishment range is anywhere from five years all the way up  
5 to 99 years or life for aggravated robbery. Again, the law  
6 contemplates or envisions that potential jurors go into this  
7 process with an open mind and be able to say, you know, I  
8 could keep an open mind to the low end of punishment, I  
9 could keep an open mind to the high end of the punishment,  
10 depending on the facts and circumstances. Does that make  
11 sense to you?

12 A. Yes.

13 Q. Because, I mean, you can commit a murder or  
14 you can commit a robbery many different ways under many  
15 different sets of facts, even if it's a lesser included of  
16 capital murder. Does that make sense to you?

17 A. Yes.

18 Q. Do you think that you can keep an open mind to  
19 that full range of punishment --

20 A. Yes.

21 Q. -- for the lesser included offense of  
22 aggravated robbery?

23 A. Yes.

24 Q. As I have told you, once a person is convicted  
25 of capital murder -- I don't think I have told you this, but

1 there's two possible punishments. You know, if the  
2 questions are answered yes, yes, and no, it's a death  
3 sentence. If the questions are answered any other way, it's  
4 an automatic life sentence.

5 One way to look at it is, if a person is  
6 convicted of capital murder, he's kind of sitting on a life  
7 sentence. And only if the questions are answered yes, yes,  
8 and no will they go ahead and the death penalty be imposed.  
9 Does that make sense to you?

10 A. Yeah.

11 Q. Okay. You will be told, if you are a juror in  
12 this case, that what a life sentence means is forty years  
13 day for day without the possibility of parole. After forty  
14 years, forty hard years, a person convicted of capital  
15 murder would become eligible for parole. Doesn't mean they  
16 would get it. They would just be eligible. They may  
17 actually serve out a true life sentence. You just never  
18 know.

19 We tell you that and then the law  
20 requires that you not consider it. Okay? We tell you what  
21 it is typically, right?

22 A. Yeah.

23 Q. The law of lawyers. Let me see if I can make  
24 it make sense to you. You know, we talked about kind of  
25 people having mental discipline and really working through

1 these questions, you know, we don't want people saying, gee,  
2 forty years, that's long enough, so I'm just going to go  
3 ahead and give them a life sentence.

4 And we don't -- conversely, we don't want  
5 people saying forty years, that's not long enough. I never  
6 want to get him out of prison, so I'm not going to work  
7 through the questions. I'm just going to go ahead and give  
8 them the death sentence. Does that make sense to you?

9 A. Yes.

10 Q. It's really just a way of reenforcing that  
11 mental discipline to work through the questions. So, you  
12 know, the bottom line question is in order to be able to  
13 follow the law and be a qualified juror is, you know,  
14 knowing that life means forty, could you kind of put that  
15 out of your mind and just consider a life sentence to be a  
16 life sentence? Could you do that?

17 A. Yes.

18 Q. Wouldn't have any problems along those lines?

19 A. No.

20 Q. Okay. Mr. Shannon, do you have any questions  
21 of me about capital murder or any of the things we talked  
22 about?

23 A. No.

24 Q. You said that you had some friends that were  
25 attorneys; is that right?

1 A. Yeah.

2 Q. Any of them criminal attorneys or practice  
3 criminal law?

4 A. Some acquaintances.

5 Q. Okay. Any names that you can think of?

6 A. Um, let's see. I can't think of my neighbor's  
7 name now.

8 Q. Must not be too close to him, huh?

9 A. No, I don't see him that often.

10 Q. I tell you why I ask that question. I left  
11 somebody on the jury one time who was college roommates with  
12 the defense attorney who was trying the case and they didn't  
13 tell me that. So I make sure I ask now. If you ever think  
14 of who your neighbor is -- do you think he practices  
15 criminal law?

16 A. Yeah, here in Dallas.

17 Q. Okay. You are retired now; is that right?

18 A. Right.

19 Q. And where did you work?

20 A. I worked for aircraft companies, different  
21 aircraft companies.

22 Q. Okay. As a toolmaker; is that right?

23 A. Toolmaker supervisor.

24 Q. What do you do now that you are retired?

25 A. Now that the kids are off the golf course,



1 going back to school. I plan on going back out there.

2 Q. You also do some fishing; is that right?

3 A. Exactly.

4 Q. What type of fishing do you do?

5 I A. Let's see, I'm going deepsea fishing next week  
6 off of Florida.

7 Q. Any questions or concerns about going into  
8 this process or anything we haven't talked about?

9 A. No. The time frame is good for me.

10 Q. Once I finish talking to you here in another  
11 minute, Ms. Busbee or Mr. Sanchez is going to visit with  
12 you. Do me a favor. If you think of your neighbor's name,  
13 let me know?

14 A. I'll be thinking about it before I leave and  
15 I'll give it to you.

16 Q. Just raise your hand and tell one of them.

17 A. Okay.

18 Q. Give me just a second. Mr. Shannon, thank you  
19 for your time.

20 MR. WIRSKYE: That's all I have, Judge.

21 MS. BUSBEE: May it please the Court.

22 CROSS-EXAMINATION

23 BY MS. BUSBEE:

24 Q. Okay. Mr. Shannon, I don't live in your  
25 neighborhood or Mr. Sanchez, do we?

1 A. No.

2 Q. Okay. I just wanted to make Mr. Wirsky feel  
3 better. He just went through a lot of questions with you  
4 that were kind of yes and no questions. It didn't get me  
5 anywhere because I don't feel like I know you very well yet.

6 A. Okay.

7 Q. You said that -- in your questionnaire that in  
8 certain circumstances a life sentence might be appropriate  
9 in a capital murder case instead of the death sentence. And  
10 now, while you probably already knew this, refreshing your  
11 memory, you know that a capital murder conviction doesn't  
12 mean a death sentence by any means.

13 Do you have any thoughts on what sort of  
14 things, what sort of things would factor into your decision  
15 as to whether someone should get a life sentence or death  
16 sentence? I don't think you elaborated upon that in the  
17 questionnaire and I wonder if you have given it much thought  
18 since.

19 A. I haven't given it much thought and I'm  
20 probably not going to be very creative in that area for you.  
21 If you have some suggestions, I may agree with them.

22 Q. Okay. We need to put you on the jury. Let me  
23 ask you some questions about this, then. When you found  
24 out, you know, what kind of case you were going to be on or  
25 that you were going to be on this case, which, I guess, is

1 some notoriety, I suppose, particularly since Grand Prairie  
2 and Irving are kind of close, did you think that you had  
3 already formed some opinions as to what you knew happened in  
4 this case?

5 A. Probably.

6 Q. Okay. Could you tell us what those might be?

7 A. Um, just opinions -- about him being guilty?

8 Q. Well, any opinion that you have. I didn't  
9 want to put any words in your mouth, but we all have them  
10 and you strike me as a man who has strong opinions.

11 A. In some areas, yeah, I do. But I didn't dwell  
12 on it that long, you know. I read it, saw it in the media a  
13 couple of years ago.

14 Q. Okay. Fair enough. You made some comments --  
15 well, I'll come back to that in a minute. You said that  
16 your brother was an auxiliary cop, but he also was -- had a  
17 social worker degree or something like that?

18 A. Right. He worked for the Dallas County Boys  
19 Home.

20 Q. How long was he employed doing that?

21 A. Probably about 20, 25 years.

22 Q. Did you ever have occasion to go out there or  
23 help him or assist in any activities out there?

24 A. Let's see, he took a bunch of kids to a camp  
25 one time and I volunteered and went up and cooked for them.

1 Q. You weren't necessarily involved in any of his  
2 activities at the boys home?

3 A. No. That one instance is what I can remember.  
4 I think that was some camp they had up in Texoma, Lake  
5 Texoma.

6 Q. When your brother worked as an auxiliary  
7 police officer, did he perform the same duties as a regular  
8 police officer? Did he go with the police officers? That  
9 can mean different things. Was he commissioned as a peace  
10 officer?

11 A. I don't know.

12 Q. Did he carry a gun when he was --

13 A. Yes.

14 Q. I know that you mentioned that you have been  
15 on two juries, but you weren't the foreman. Would you  
16 characterize those as pleasant experiences?

17 A. Some parts of it, you know. You get a  
18 rewarded feeling. Some -- let's see, there was one where in  
19 the voir dire stage there was one of the guys that, you  
20 know, after when we were deciding whether guilt or innocence  
21 and he said -- he kept saying, nobody seen him do it. Well,  
22 that's what they asked you about two weeks ago, you know.  
23 So that was an unpleasant experience.

24 Q. And, see, that's what I'm trying to get to  
25 with you. I can't get a feel for you very much because you

1 know how you feel about things and are definitely certain  
2 about them, but I'm not getting a feeling for it.  
3 Obviously, we have lots and lots of people here to choose  
4 from and I just kind of want to see where your mindset is,  
5 see if you are somebody we would want to serve on this jury.

6 I noticed that you said on this previous  
7 case where you had been in the hot seat once before that you  
8 saw it on television, his reaction to the verdict. I think  
9 they know what case it is, but I'm not privy to that, so  
10 could you tell us what you saw on television?

11 A. The case was a Garland officer that was shot  
12 and killed. And the guy, when he found out he was guilty,  
13 he was cussing the Judge out and, you know, do you remember  
14 that one now?

15 Q. Well --

16 THE COURT: You didn't narrow it down  
17 very much.

18 Q. (By Ms. Busbee) He didn't throw anything at  
19 him, did he?

20 A. I think he was trying to get to several of  
21 them.

22 Q. Well, no, but now that you mention, I do  
23 remember. Didn't it happen in a bank or something like  
24 that?

25 A. Yes.

1 Q. I remember that. I wasn't involved in that.  
2 Now, we talked about it or Mr. Wirskye talked to you about  
3 the various different types of capital murder and you know  
4 this. Capital murder can be the intentional killing of a  
5 child under six, murder in the course of a robbery, murder  
6 of a fireman in the course of his or her duties.

7 Do you think that when someone has been  
8 found guilty of, say, killing a police officer, fireman,  
9 child under six, that the death penalty is something that  
10 they should receive automatically?

11 A. After they have been convicted?

12 Q. Yes.

13 A. Um, not necessarily.

14 Q. Okay. Because, obviously, those are the kind  
15 of cases that make emotions run high and everybody is mad  
16 when a child gets killed and a police officer gets killed  
17 and a fireman and that's one of the reasons that the law is  
18 more severe for that sort of an offense.

19 Now, the problem is because the emotions  
20 are high on that type of case, the courts have drawn up  
21 these questions and the Legislature has -- well, the Court  
22 has given us guidelines and the Legislature has come up with  
23 this scheme of things to make sure that jurors don't just  
24 act on their emotions, but rationally make decisions so that  
25 the death penalty won't be administered with, you know, rage

1 or passion, but with -- based on facts and deliberation with  
2 members of the community.

3 So I think we have covered probability  
4 pretty well with Mr. Wirsky. But I'm not too sure about  
5 your feelings about Special Issue No. 3. Talking about a  
6 hypothetical death penalty case and not about this  
7 particular case at all, in a case where you have found  
8 someone guilty of the offense of capital murder as a party  
9 and not the person who actually committed the offense, but  
10 participated in it, if you felt that that person was --  
11 there's a probability that person would be dangerous in the  
12 future, which is Special Issue No. 1, and that you felt like  
13 that person anticipated, not just should have, but  
14 anticipated someone was going to get killed and you answered  
15 that yes, too, would there be anything else that could be  
16 shown to you that would make you say despite the fact that I  
17 have found beyond a reasonable doubt that he knew it was  
18 going to happen and he was a future danger, I think that a  
19 life sentence is more appropriate than a death sentence?

20 A. I don't know. I guess I would hear all of  
21 that during the stage of the trial and formulate that  
22 opinion.

23 Q. Okay. So your mind would be open to  
24 considering this -- this is what we call kind of a safety  
25 valve. I have found that, I have found this, and that would

1 be the death penalty except for I don't think this  
2 individual should receive the death penalty. That's kind of  
3 briefly stated how that works.

4 A. Right.

5 Q. Would you -- are you open to that?

6 A. Sure.

7 Q. Do you have anything -- I hate asking this,  
8 because I know it puts you on the spot, but do you have  
9 anything in your mind that you think might be mitigating in  
10 a mythical case, not the one we're here on now?

11 A. No.

12 Q. It's kind of hard to say. Is there anything  
13 that we haven't asked you about? You know, you talked about  
14 the juror who failed to raise his hand and talk about  
15 something and then it caused a big problem back in the jury  
16 room. Is there anything that you think is important about  
17 you or your feelings or anything that we should have asked  
18 you and we didn't ask you?

19 A. You probably should have had a newspaper out  
20 there and probably offered me a drink of water. Everybody  
21 else has got one.

22 Q. I agree with you there. I don't know why we  
23 don't do that. You are the one having to do all the  
24 talking. How is our how-are-we-doing questionnaire?

25 MR. WIRSKYE: Permission to approach the



1 juror?

2 THE COURT: You may.

3 A. Thank you, sir.

4 Q. (By Ms. Busbee) Other than the service, then,  
5 is there anything that we should have asked you that you  
6 would like to comment on?

7 A. No, ma'am.

8 MS. BUSBEE: I'll pass this juror, Your  
9 Honor.

10 THE COURT: Mr. Shannon, if you would,  
11 please wait for us outside and give us a few minutes and  
12 we'll have you back in and let you know if you will be on  
13 this jury or not.

14 [Prospective juror out]

15 THE COURT: Mr. Wirskye, what says the  
16 State?

17 MR. WIRSKYE: State has no challenge for  
18 cause, Your Honor.

19 MS. BUSBEE: If -- may we have a minute,  
20 Your Honor?

21 THE COURT: What says the defense as far  
22 as challenge for cause? Cause or not? Do you have a  
23 challenge for cause?

24 MS. BUSBEE: No, Your Honor.

25 THE COURT: Now, would you like to have a

1 minute? Would you like to step into your office?

2 MS. BUSBEE: Yes.

3 (Recess)

4 THE COURT: Mr. Wirskye, what says the  
5 State?

6 MR. WIRSKYE: State will accept the  
7 juror.

8 MS. BUSBEE: Defense will strike.

9 THE COURT: Defense exercises peremptory  
10 strike No. 1. Ask Mr. Shannon to come back in, please.

11 [Prospective juror in]

12 THE COURT: Mr. Shannon, we apologize for  
13 the service this morning in court. We do better in trial, I  
14 can tell you that. You are zero for two. You are not going  
15 to serve on this jury. We appreciate your time and your  
16 participation. Thank you very much.

17 (Recess)

18 THE COURT: Sheriff, Ms. Holcombe. Thank  
19 you. You may be seated. Good afternoon, Ms. Holcombe, how  
20 are you?

21 PROSPECTIVE JUROR: Fine.

22 THE COURT: Have you had enough time to  
23 review the orientation guide?

24 PROSPECTIVE JUROR: Yes, uh-huh.

25 THE COURT: I'm not going to go over

1 anything other than try to relax a little bit. Sometimes it  
2 can be a little intimidating when you were here last in a  
3 room with 800 people with you and we didn't have eye to eye  
4 contact. And you know that you filled out the questionnaire  
5 and I remind you that you are still under oath here today.  
6 As we said, just tell the truth. That's all the lawyers  
7 want. If you don't understand the questions or don't  
8 understand what it means, that's the opportunity for a give  
9 and take.

10 So the objective is for you to understand  
11 the law. That's the long and short of it, understand the  
12 law and then they will ask you your opinions based on the  
13 law. Once again, any questions of me or the attorneys, just  
14 let us know.

15 Now, I've given you the outline for the  
16 trial date we anticipate shall begin on November 10th.  
17 Would you have any problems serving the Court for those two  
18 weeks?

19 PROSPECTIVE JUROR: No.

20 THE COURT: With that, I'll turn it over  
21 to Mr. Shook. If you would, please try to remember to say  
22 yes or no to any answers to questions because she has to  
23 record everything that you say.

24 PROSPECTIVE JUROR: Okay.

25 THE COURT: Mr. Shook.

1 MR. SHOOK: May it please the Court?

2 BARBARA HOLCOMBE,

3 having been duly sworn, was examined and testified as  
4 follows:

5 DIRECT EXAMINATION

6 BY MR. SHOOK:

7 Q. Ms. Holcombe, I'll ask you questions on behalf  
8 of the State this afternoon. I want to start out by  
9 expressing our appreciation for you taking the time to fill  
10 out the questionnaire. I know it asks for a lot of  
11 information, but it's quite helpful to us and you may not  
12 believe it or not, but it speeds up this process a little  
13 bit.

14 What I'll do is ask you questions on the  
15 information that you provided us here in the questionnaire.  
16 We'll talk about the death penalty, capital murder, and the  
17 laws that apply and laws that apply in every type of case.  
18 And what we're looking for is just your honest opinions.

19 You have been on several juries before,  
20 so you are somewhat familiar with the process, although this  
21 process is a little different from other jury selections.  
22 As I'm sure you well remember, usually the juries are  
23 selected from a large group of people with the lawyers  
24 speaking to them. But because this is a capital murder case  
25 in which the State is seeking the death penalty, the law

1 allows us to have this individual discussion with each  
2 juror. Okay?

3 If you have any questions at any time,  
4 feel free to ask. All right?

5 A. Okay.

6 Q. Looking at your background, you work for the  
7 American Heart Association?

8 A. Yes.

9 Q. What is it you do with them exactly?

10 A. I'm a manager of applicant services. In  
11 essence I manage a unit that talks to potential applicants  
12 MDs, PhDs, and then we receive the grant applications from  
13 them and take them through a detailed process through what  
14 we call peer review where a scientific group reviews them  
15 and grades them.

16 Q. Okay. And you manage that and have a staff of  
17 -- is it three people?

18 A. Right.

19 Q. That work under your supervision?

20 A. Uh-huh.

21 Q. And your husband works for the Bureau of  
22 Citizenship and Border Protection which, I guess, is part of  
23 the Homeland Security now?

24 A. Right.

25 Q. What are his duties with them?

1           A.       He's an immigration inspector, so he works at  
2 the DFW Airport, in essence, as the port of entry doing  
3 immigration inspection on people coming in from  
4 international flights.

5           Q.       I recall that somewhere in the questionnaire  
6 it looked like he had some training, some type of law  
7 enforcement training?

8           A.       Right.

9           Q.       Is he a law enforcement officer with his  
10 duties?

11          A.       Yes. He's considered a federal law  
12 enforcement officer.

13          Q.       Does he carry a weapon?

14          A.       Yes, he does, uh-huh.

15          Q.       And he works out at the airport?

16          A.       Yes.

17          Q.       He's been pretty busy, I guess, with the  
18 events of the last two years?

19          A.       Well, he's -- this is a new position, so he's  
20 actually only been at the airport since about April.

21          Q.       What was he doing prior to that?

22          A.       Substitute teaching in the Rockwall School  
23 District.

24          Q.       Okay. So he's just recently become part of  
25 that?

1 A. Uh-huh.

2 Q. Does he enjoy that type of work?

3 A. Um, yes.

4 Q. Okay. Now, I wanted to talk to you a little  
5 bit about your jury service. You have been, it looks like,  
6 on a DWI, sexual assault that involved a minor -- was the  
7 defendant a juvenile or was the victim the minor?

8 A. It seems to me -- I mean, when it came to  
9 trial she was 12 or 13 and the occurrence was several years  
10 earlier.

11 Q. The victim was?

12 A. Uh-huh.

13 Q. So was that trial down here at this  
14 courthouse? Do you recall?

15 A. I believe so, yes.

16 Q. Okay. So the defendant wasn't a minor. It  
17 was the victim herself. And --

18 A. Right.

19 Q. And then you've been on some type of  
20 termination of parental rights case; is that right?

21 A. My husband was.

22 Q. Your husband was?

23 A. Uh-huh.

24 Q. The DWI, I believe you said, was a guilty  
25 finding. That was back in the '80s?

1 A. Yes.

2 Q. Would the -- this case involving the sexual  
3 assault was in 1995 or thereabouts?

4 A. Uh-huh.

5 Q. Which resulted in a hung jury?

6 A. Right.

7 Q. You put some of the information here that some  
8 of the problems where I think there were translators  
9 involved and that sort of thing?

10 A. Uh-huh, yes.

11 Q. Ultimately, what happened as far as the  
12 deliberations go?

13 A. Um, I think in essence most of the jury came  
14 to a consensus, but we had one person on the jury -- bottom  
15 line came down to her not believing a policeperson's  
16 testimony.

17 Q. Okay. They had some type of bias against  
18 police officers?

19 A. Uh-huh, right.

20 Q. And it came down to one holdout, that type of  
21 thing?

22 A. Yes.

23 Q. Overall, was that a pretty unpleasant  
24 experience, then, with one person just holding out based on  
25 that?



1 A. It was. It was, because the jury was very  
2 diverse and expressed that diversity in the jury room.

3 Q. Did you feel in that case, then, that the  
4 State had met its burden of proof?

5 A. Um, I have to stop and think about that. Yes,  
6 I mean --

7 Q. Okay. Another area I want to get into is we  
8 obviously ask if you know anyone that's been involved in the  
9 criminal justice system and it looked like your son had some  
10 problems in the early '90s?

11 A. Yes.

12 Q. Some type of counterfeiting federal charge?

13 A. Uh-huh.

14 Q. Tell us a little bit about that, what all that  
15 involved.

16 A. Um, well, he was living elsewhere and we --  
17 I'm trying to think how ultimately why we knew about it.

18 Q. So he wasn't living here in the city?

19 A. He wasn't living at our home. He was living,  
20 you know, with his girlfriend and in another part of the  
21 city.

22 Q. Okay.

23 A. And I guess at some point we were contacted  
24 about it and he -- he had used a computer to copy U.S.  
25 currency and had actually given it to some friends and they

1 had distributed it.

2 Q. All right. And did he eventually go to some  
3 type of detention center --

4 A. Yes.

5 Q. -- for some time?

6 A. Yes. He went to a federal -- I can't remember  
7 what it's called -- in Texarkana, a federal prison there for  
8 a year and a half.

9 Q. Okay. And I think you said that he had had  
10 some drug problems in the past. Was this around the same  
11 time period?

12 A. Earlier, yes.

13 Q. Okay. What's his situation now? Has that all  
14 been resolved?

15 A. He's living in Oklahoma City and he's employed  
16 with Sprint there in Oklahoma City.

17 Q. What was your take on his experience with the  
18 criminal justice system? Do you think that he was treated  
19 fairly?

20 A. Ultimately, yes.

21 Q. When you say "ultimately", what do you mean by  
22 that?

23 A. Well, as a parent you have very mixed  
24 feelings. He went -- he had several misdemeanors, so he  
25 went through the system in different ways at different

1 times. And -- but, as I say, ultimately I felt he was dealt  
2 with fairly.

3 Q. Okay. Let me turn your attention now to the  
4 death penalty capital murder and ask you how you feel about  
5 that. You put on your questionnaire that you are in favor  
6 of it as a law. Since filling out the questionnaire, you  
7 probably have had some more time to think about it. I just  
8 want you to express in your own feelings how you feel about  
9 the death penalty. Do you agree with it, do you think that  
10 we should have the death penalty for certain cases?

11 A. I think that we should. And other than that,  
12 of course, I think it depends upon the individual  
13 circumstance.

14 Q. What purpose do you think the death penalty  
15 serves?

16 A. Um, I think it truly in some cultures, I'm not  
17 sure in our culture, in some cultures it may be a deterrent  
18 of some type. And, you know, I feel under that certain  
19 heinous crime that it would be appropriate for.

20 Q. Okay. Is the death penalty a law that you  
21 have always been in favor of since you were an adult?

22 A. I don't know that I've had to make that  
23 decision until I was presented with your questionnaire.

24 Q. Not something that you really thought about  
25 that often?

1 A. Right.

2 Q. Have you ever followed any cases in the media  
3 that you thought were appropriate for the death penalty case  
4 or capital murder case?

5 A. Um, I mean, not deliberately, no.

6 Q. Okay. In Texas there are only certain crimes  
7 which can be prosecuted for the death penalty. It has to be  
8 an intentional killing and it has to be during some --  
9 carried out during some aggravated facts, is what we call  
10 it, during the course of another felony. Someone goes in  
11 and robs a convenience store clerk and murders them, that  
12 could be a death penalty case. Someone breaks into  
13 someone's home, someone commits a capital murder then, that  
14 could be a death penalty case. If you murder someone during  
15 the course of a kidnapping or during a rape, that could also  
16 be a death penalty case, or during an arson.

17 Also, there are certain individuals, victims,  
18 such as a police officer on duty, fireman on duty, prison  
19 guard on duty, those could be death penalty cases. Child  
20 under the age of six is murdered intentionally, that could  
21 be a death penalty case. Murder of more than one person in  
22 the same transaction or a serial killer situation could be.  
23 And also murder of someone for hire. Someone does it for  
24 money or if you hire someone to go murder someone for money,  
25 pay them, that could be a death penalty situation.

1 But those are the specific types of  
2 crimes that we reserve for the death penalty. There are  
3 lots of other brutal murders, which the most the person  
4 would get would be a life sentence, but could not get the  
5 death penalty.

6 Those types of crimes I've gone over, do  
7 you feel those are the types of cases which should be  
8 considered for the death penalty?

9 A. Um, I guess I would say generally, yes.

10 Q. Any reservations on any of those types of  
11 crimes?

12 A. Um, only with the same thought that it would  
13 always come down to the individual circumstances.

14 Q. Okay. In Texas when we think of what a death  
15 penalty case is or capital murder, we can't go over the  
16 facts of the case, obviously, but what we -- generally  
17 people think of is the situation where someone goes in and,  
18 let's say, murders a 7-Eleven clerk or something, the actual  
19 triggerman. Obviously, that type of person can be  
20 prosecuted for the death penalty.

21 But sometimes more than one person  
22 commits a crime or more than one person may be involved in  
23 the crime. Sometimes it takes more than one person to  
24 commit a crime. Groups of people can go in and commit a  
25 crime. Some may have different roles. Some may be more

1 actively involved. But if they were all actively involved  
2 in helping one another, the law says they can all be  
3 prosecuted for that crime, even though some may have a more  
4 active role in it.

5           The same is true for capital murder. An  
6 example we give is a bank robbery. Let's say Mr. Wirskye  
7 and I here decide we want to rob a bank. If we go into the  
8 bank and I have the guns and he has a bag for the money,  
9 I make the threats, hold the guns on people, he goes to the  
10 tellers and takes the money out of the drawer. And during  
11 the course of that robbery, I shoot one of the tellers and  
12 murder them.

13           We flee the bank, we are arrested.  
14 Obviously, I can be prosecuted for capital murder. I could  
15 receive the death penalty because I'm the triggerman. The  
16 law says that Mr. Wirskye can also be prosecuted for capital  
17 murder because he was assisting me and he was helping me  
18 carry out that crime. Ultimately, he could get the death  
19 penalty, depending on the facts.

20           Some people, though, when we talk about  
21 the death penalty, draw a line there with the accomplices.  
22 We call them parties or the law of parties. If it were up  
23 to them, they have no problem with the death penalty for the  
24 person who actually causes the death or the triggerman, but  
25 they do have reservations or they are personally opposed to

1 the death penalty for someone who assists in a crime, an  
2 accomplice.

3 Other people agree with the law,  
4 recognizing that even if they are not the triggerman,  
5 depending on the facts, you could be prosecuted for the  
6 death penalty and ultimately receive it.

7 But I like to ask people how they feel  
8 generally about that. There aren't any right or wrong  
9 answers. How do you feel about that law? Do you feel it's  
10 a fair law to be able to prosecute accomplices for capital  
11 murder and ultimately receive the death penalty or is that  
12 something that you would really reserve a different type of  
13 punishment for?

14 A. I think, generally, I would think it's a fair  
15 law.

16 Q. And why do you think it's fair to prosecute  
17 others involved in a capital murder that aren't the actual  
18 triggerman?

19 A. Because I'm assuming that if they are involved  
20 in the planning and know that this is a possibility of, you  
21 know, the ultimate outcome, that they are, in essence,  
22 accepting the risk.

23 Q. Okay. That's kind of what the law says.  
24 There's two ways we can prove it. One is the facts show and  
25 you can draw all the intent from the facts that the person

1 is actively participating, aiding, maybe if they planned it  
2 or they are actively there helping in the offense, that  
3 could be one way to do it.

4 And the other is called conspiracy or  
5 party conspiracy. If Mr. Wirskye and I agreed to commit  
6 aggravated robbery, we robbed the bank, and from the facts  
7 -- and, say, I went ahead and committed murder in  
8 furtherance of that conspiracy, in other words, I shot one  
9 of the tellers to get away or just during the course of that  
10 felony, the law says that all the parties involved should be  
11 held responsible if they should have anticipated that  
12 something like that could happen.

13 My fact situation, Mr. Wirskye knows I  
14 have guns, maybe he knows what I'm like, and kind of what  
15 your reasoning was, they kind of assumed that might happen.  
16 And that's what we have to prove, they anticipated a life  
17 could be taken.

18 In order to get them guilty, we don't  
19 even have to prove that they wanted that to happen. Now, to  
20 get the death penalty, we have to eventually prove that they  
21 did anticipate something would happen. But it goes along  
22 those lines that you talked about. They don't have to be  
23 the actual triggerman, but if they agreed to commit one  
24 crime and another crime was carried out, then the law holds  
25 them responsible. It's a way, I guess, of deterring people



1 from committing these types of offenses.

2 What I hear you saying is you are in  
3 agreement with the law of parties --

4 A. Yes.

5 Q. -- and could do that? Okay. Now, under our  
6 procedures the trial would take -- would proceed the same in  
7 any capital murder case. You have the guilt/innocence stage  
8 where the State must prove its case beyond a reasonable  
9 doubt. If we do that, we don't stop. We go to the  
10 punishment phase where you can hear additional evidence.  
11 You may or may not hear additional evidence, but you can  
12 hear additional background information and that sort of  
13 thing.

14 And at the close of that, the jury then  
15 gets these Special Issues to look at and we'll go over these  
16 in more detail in a moment. But basically, Special Issue  
17 No. 1, the State has to prove the defendant will be a  
18 continuing danger to society. Special Issue No. 2, we have  
19 to prove that he either caused the death or if he didn't, if  
20 he was a party, that he anticipated someone could be killed.  
21 And Special Issue No. 3 is the mitigating evidence issue in  
22 that you look at all the facts of the case and decide is  
23 there sufficient mitigating evidence that a life sentence  
24 should be imposed, rather than a death sentence. And those  
25 questions are answered yes and no.

1                   If the questions are answered yes, yes,  
2                   and no, the Judge has no choice, he would sentence the  
3                   defendant to death. If the questions are answered any other  
4                   way, again, he would have no choice and he would sentence  
5                   the defendant to life in prison. But those are the two  
6                   choices once someone has been found guilty of a crime. It's  
7                   a death sentence or a life sentence and that's based just on  
8                   how the jury answers those questions. Is that clear to you?

9                   A.       Yes.

10                  Q.       Are you aware of the method of execution in  
11                  Texas?

12                  A.       Um, not really.

13                  Q.       Okay. It's by lethal injection. It used to  
14                  be by the electric chair, but they changed it several years  
15                  ago. The procedures are the same in each case. Sometimes,  
16                  depending on the case, some will get a lot of news coverage,  
17                  which you may or may not have seen. I don't know.

18                         The procedures are the same. If the  
19                  defendant is convicted and these questions are answered in  
20                  that way and the Judge sentences him to death, he would be  
21                  put on death row. He would wait there a number of years.  
22                  At some point in time the Judge would actually issue a date  
23                  of execution.

24                         On that day or the day before that date,  
25                  he would be taken from death row and put in the prison unit

1 that is in downtown Huntsville where all executions take  
2 place. On the date of his execution he would be given an  
3 opportunity to meet with his family, friends, or a minister.  
4 He would be given a last meal.

5 But at 6:00 p.m. all executions take  
6 place under our law. He would be taken to the execution  
7 chamber. He would be placed on a gurney. He would be  
8 secured there by leather straps and needles would be placed  
9 in his arm. Witnesses would come into the viewing rooms.  
10 There are witnesses there for the defendant and there's  
11 witnesses there for the victim's family, if they choose to  
12 be there.

13 Once they are there, the warden moves  
14 forward with the execution. The condemned is allowed a last  
15 statement and after he finishes that last statement a signal  
16 is given and lethal substances are then placed in his body  
17 which shut down his heart and lungs. Death occurs very  
18 quickly. Oftentimes the news covers this. They go over the  
19 defendant's last words, maybe the family's last words, that  
20 sort of thing.

21 That -- and I don't mean to be morbid,  
22 but I want to lay all our cards on the table, too. This is  
23 a death penalty case in which we are actively seeking the  
24 death penalty. It's a case in which we feel we have the  
25 type and quality of evidence to convince the jury of the

1 defendant's guilt and that these questions would be answered  
2 in such a way which would result in his execution some day.

3 And in Texas executions actually do  
4 happen. You may be aware that there are some states that  
5 have capital murder, they prosecute people, and put them on  
6 death row, but the executions rarely take place. Texas  
7 actually leads the nation in executions. So we're talking  
8 about a punishment that ultimately will be carried out.

9 You've told us that philosophically you  
10 feel that the death penalty is appropriate for some cases,  
11 all depending on the facts?

12 A. Right.

13 Q. You told us that you agree with the law of  
14 parties that accomplices can be prosecuted and they can get  
15 the death penalty, again, depending on the facts?

16 A. Yes.

17 Q. And what I need to know is this, as best you  
18 know yourself, do you feel you are the type of person that  
19 could listen to this evidence and then make this decision  
20 and if we do actually prove these things to you beyond a  
21 reasonable doubt, you could take pen in hand and answer  
22 those questions in a way, knowing that when you do, some day  
23 the defendant would be executed in the manner I've  
24 described?

25 A. Yes.

1 Q. Okay. We just depend on your honesty and I  
2 appreciate your candor on that, ma'am. Let's talk a little  
3 bit about these Special Issues. You don't get to these  
4 questions, unless you have already found the defendant  
5 guilty. But then the law says that you can hear additional  
6 evidence, additional background evidence, good and bad. You  
7 may or may not. It just depends on the particular case.

8 This first question, it starts out with a  
9 no answer, just like someone starts out with a presumption  
10 of innocence, and the State must prove it beyond a  
11 reasonable doubt that it should be answered yes. And the  
12 question asks whether there's a probability that the  
13 defendant would commit criminal acts of violence that would  
14 constitute a continuing threat to society. It's asking the  
15 jurors to make a prediction about the defendant's future  
16 behavior.

17 Do you feel comfortable answering a  
18 question like that, if you are given sufficient facts or  
19 evidence?

20 A. Yes.

21 Q. Okay. What types of information would you  
22 want to know? What would be important to you in answering  
23 that type of question?

24 A. The history, background.

25 Q. Someone has had a background or that sort of

1 thing?

2 A. Uh-huh.

3 Q. That's the answer we most often get. People  
4 want to know if there's a pattern, that sort of thing,  
5 something like this may have occurred before.

6 A. Uh-huh.

7 Q. Now, if that type of information exists, we  
8 can present it. We can actually present the witnesses.  
9 There are some capital murders where really the only  
10 evidence the jury has is the facts of the crime itself  
11 alone. The person may not have an extensive history. That  
12 doesn't prevent us from prosecuting that person for capital  
13 murder. And the jury may have only the facts of the offense  
14 alone to decide that, if they are a continuing danger.

15 Do you feel the facts of the offense  
16 could give you enough information about an individual that  
17 tells you that they are dangerous, again, depending on what  
18 those facts are?

19 A. I'm not sure.

20 Q. Okay. Why is that?

21 A. I do think most of us look to patterns and  
22 history, probably.

23 Q. Okay. So that would be the most important  
24 factor to you? The reason I say that is maybe a person may  
25 not -- maybe they were a Boy Scout their whole life, but

1 then they commit some horrible capital murder, maybe a very  
2 brutal crime. And then the jury would really only have,  
3 well, hasn't done anything or hasn't been caught on  
4 anything, but, boy, this is a horrible crime. Can that give  
5 me enough facts, maybe the planning or how brutal it was,  
6 what they did afterwards, that could tell you that person  
7 would be a continuing danger?

8 Some people tell us no, they would  
9 actually require a criminal history. Other people tell us  
10 no, no, I could see someone who maybe they committed their  
11 first act, but they started out very badly and that could  
12 give them enough information, just depending on the actual  
13 facts of the case.

14 How do you feel about that? Is it going  
15 to come down to the facts or are you one of those persons  
16 that really would require a previous criminal history?

17 A. Well, because of the word "probability" to me  
18 that really lends itself to looking for patterns and  
19 history. So --

20 Q. When you see the word "probability" in that  
21 question, what does it mean to you?

22 A. It means statistical evidence, I guess, that's  
23 working with MDs and PhDs, so that's why trends and history  
24 would, you know, with that word "probability" seems  
25 important to me.

1 Q. Okay. You will not get any legal definitions  
2 in the punishment stage about what these words mean. The  
3 definitions would be left up to you and the other jurors.  
4 That's why we kind of ask you about them. Probability,  
5 obviously, means more than a possibility because anything  
6 could be possible. It's certainly less than a certainty,  
7 also.

8 Are you comfortable with probability as  
9 it's used in that particular sentence?

10 A. Um, yes.

11 Q. Make sense to you?

12 A. Yes.

13 Q. When you see the words "committing criminal  
14 acts of violence", what types of things do you think of?

15 A. Harm to others.

16 Q. Harm to others?

17 A. Uh-huh.

18 Q. Could be a murder case, could be some other  
19 type of assaultive offense, that sort of thing?

20 A. Uh-huh.

21 Q. Okay. And when you see the words "continuing  
22 threat to society", what does "society" mean to you?

23 A. The public at large, I guess.

24 Q. Okay. Could it also mean people down in the  
25 prison system, guards, inmates, teachers, administrators,



1 that sort of thing?

2 A. Uh-huh, yes.

3 Q. It could mean anyone anywhere that the  
4 defendant may come into contact with?

5 A. Yes.

6 Q. Okay. Special Issue No. 2, that question gets  
7 a little lengthy. I would like you to take a moment and  
8 read that to yourself before I ask you a couple of other  
9 questions.

10 That question covers, again, kind of the  
11 party situation. It can cover different scenarios. The  
12 first part says whether the defendant actually caused the  
13 death. If you believe from the evidence he was the actual  
14 triggerman, then the question is pretty simple. But we  
15 can't get into the facts, but we are prosecuting this case  
16 under the theory of parties or that he was not the  
17 triggerman. That's why I wanted to go over all that type of  
18 law with you.

19 And that's why this is important, that if  
20 you don't believe that he actually caused the death, if he  
21 did not actually cause the death of the deceased, but  
22 intended to kill the deceased or another, then that is his  
23 intent was there, maybe someone else committed the murder,  
24 or anticipated that a human life would be taken. And that's  
25 what we talked about earlier, kind of what you said in your

1 own words, they kind of once they entered that situation  
2 with someone armed like that, they kind of accepted the  
3 responsibility that something could go wrong or happen like  
4 that. Do you think this is a good question to have?

5 A. Yes.

6 Q. Okay. Now, you understand that this question  
7 goes directly to the parties, that when prosecuting someone  
8 under the law of parties, this is what we have to prove that  
9 either he had the intent to kill or he did anticipate that a  
10 human life would be taken.

11 In a jury trial we present the evidence  
12 and when we are proving someone's intent, oftentimes we can  
13 just present the facts and the jurors are allowed to make  
14 reasonable deductions from the evidence to look at someone's  
15 intent. In other words, we are not always able to say, you  
16 know, this is what he intended. We can argue that a  
17 person's intentions can be drawn from the actual facts of  
18 the case, what they did, what their role in the crime was,  
19 that sort of thing.

20 Do you feel that's a fair way of proving  
21 a case, if we're able to present all the facts to you? In  
22 other words, do you think, yes, you can draw or learn a  
23 person's intentions from the facts of the case, if enough is  
24 presented to you?

25 A. Yes.

1 Q. And is that all -- concerning all relevant  
2 facts about how a crime was planned and how it was pulled  
3 off and that sort of thing?

4 A. Yes.

5 Q. Okay. You don't have any problem, then, I  
6 take it, with Special Issue No. 2 as far as the death  
7 penalty case? You feel that, again, that that's a fair law  
8 and that the State should be able to prosecute someone under  
9 that theory?

10 A. Yes.

11 Q. That question starts out with a no answer and,  
12 again, we have to prove to you that it should be answered  
13 yes. It may be the same evidence that you heard in the  
14 guilt/innocence stage. You just look at it again and then  
15 make that decision did the State prove it to you. And you  
16 may also do it on additional background evidence that you  
17 learned in the punishment phase that would aid you in  
18 answering that question.

19 But what you have to do is wait. Just  
20 because you found the defendant guilty, you don't  
21 automatically answer those questions. You have to go back  
22 in the jury room, look at the evidence you have already  
23 heard and any new evidence you have heard and then decide if  
24 the State has proven these two questions. You feel you  
25 could do that?

1 A. Yes.

2 Q. Would you require the State to prove this to  
3 you beyond a reasonable doubt?

4 A. State that again?

5 Q. That the law says that the State has to prove  
6 these questions to you beyond a reasonable doubt, just like  
7 we have to prove his guilt. And what I want to ask you is  
8 would you be able to follow that law and require us to prove  
9 that to you beyond a reasonable doubt?

10 A. Yes.

11 Q. Okay. Now, this last question is the Special  
12 Issue question. It's the last one you get and neither side  
13 has the burden of proof. You don't get to that question  
14 until you found the defendant guilty of capital murder,  
15 until you have already determined he's a continuing danger  
16 to society, and that he either caused the death or  
17 anticipated that a death would occur.

18 And then you look at all the evidence you  
19 have heard, the crime itself, and his background evidence  
20 and determine if you think there's sufficient mitigating  
21 evidence that would call for a life sentence rather than a  
22 death sentence.

23 If you will, just take a moment and read  
24 that question. It's the lengthiest one and then we'll go  
25 over a few questions.

1                   It's kind of a catch-all or we call it a  
2 safety net. It allows the jurors to look at everything in  
3 his background and then decide if you think something is  
4 sufficiently mitigating.

5                   Now, what mitigating evidence is, I can't  
6 tell you. It's up to you and the other jurors. You don't  
7 even have to tell us what you think mitigating evidence is  
8 or you don't have to agree with the other jurors.

9                   Let me give you an example. You may have  
10 a capital murder case where you are sitting as a juror and  
11 when you get to this question, the evidence may have shown  
12 that the defendant has four PhDs from Harvard. One juror  
13 might think that's mitigating. He's done some positive  
14 things with his life. May not be sufficient to spare his  
15 life, but they may want to look at it that way. Another  
16 juror could say actually that's kind of aggravating. You  
17 know, someone that has four PhDs shouldn't go around killing  
18 people or committing capital murders. I would hold that  
19 against him. So it could go either way. It just depends on  
20 how you view the evidence and it could be anything.

21                   As you sit there today, can you give us  
22 any indication or anything you might believe could be  
23 potentially mitigating evidence that you would consider?

24                   A. Not really. I mean -- that statement, in  
25 essence, if that's what the Judge says the jury is to look

1 at --

2 Q. Right. Consider all of that.

3 A. Right.

4 Q. Don't feel bad because I ask that question to  
5 every juror and I would say 99 percent say, not really.

6 It's not an issue you usually wouldn't think about. It's  
7 just basically whatever you think could be mitigating. We  
8 go over some things with jurors. Sometimes you consider a  
9 person's background, how they were raised. Maybe they were  
10 raised in poverty. Maybe they came from a broken home.  
11 Some jurors feel that's potentially mitigating. Other  
12 jurors tell us, no. A lot of people were raised in that  
13 environment.

14 You may hear about physical or mental  
15 abuse of a person as they grew up. Some people believe  
16 that's potentially mitigating, depending on the severity.  
17 Other people tell us I feel bad for them, but that happens a  
18 lot and once you are an adult you have to be held  
19 accountable.

20 Sometimes you hear about drug use. Some  
21 people feel that could be mitigating and other people say,  
22 if they are voluntarily taking drugs, no, no, that's not.

23 How do you feel about those types of  
24 issues? Do you view that as potentially mitigating or  
25 something you might be open to it? How do you feel about

1 that?

2 A. In a very general way, I don't think those are  
3 mitigating circumstances in my mind.

4 Q. Just something you would have to hear?

5 A. Uh-huh.

6 Q. That's all the law says. You don't have to  
7 think of what is mitigating. All you have to be able to  
8 tell the Court is I'll keep my mind open to it. If I feel  
9 something sufficiently mitigating where I think a life  
10 sentence should be imposed, I'll answer the question that  
11 way. If I don't, I'm going to answer it no.

12 But you have to be able to keep your mind  
13 open to it, even though you have already found them guilty,  
14 even though you already feel he's a continuing danger or  
15 anticipated that someone would die, you can keep your mind  
16 open and then answer the question yes or no, just depending  
17 on the facts. Do you feel that you can do that?

18 A. Yes.

19 Q. Okay. Fair enough. There's another area that  
20 may or may not come up. In any case you have the jury  
21 considers lesser included offenses at times. A lesser  
22 included offense of capital murder where we have alleged  
23 robbery, is aggravated robbery, taking someone's property at  
24 gunpoint. You may have a reasonable doubt about the  
25 defendant causing the death, but maybe not about robbery.

1 In those situations you might find the defendant guilty of  
2 aggravated robbery.

3 Now, if you found the defendant guilty of  
4 aggravated robbery instead of capital murder, the punishment  
5 range changes completely. You don't get these questions.  
6 You just get a penalty range for years in prison. One end  
7 is a life sentence or 99 years and the other end is five  
8 years in prison and anywhere in between.

9 You get to hear all the background  
10 evidence and then you decide what is appropriate. If you  
11 think a life sentence would be appropriate, you could do  
12 that based on the facts, 50 years, 30 years, or as little as  
13 five years in prison.

14 Again, all you have to be able to do is  
15 assure the Judge that you can keep your mind open to that  
16 full range, consider it, and if you think the right thing to  
17 do based on the evidence is give a life sentence, you could  
18 do that, or as little as five years in prison, you could do  
19 that or anywhere in between, just based on what the evidence  
20 tells you to do.

21 Do you feel you can keep your mind open  
22 to that full range of punishment in an aggravated robbery  
23 situation?

24 A. Yes.

25 Q. Okay. There are some rules that apply to each



1 case and you will be familiar with these because you grew up  
2 here, for one thing, and they are taught in school, most of  
3 them, and, also, you have been on two juries so you have  
4 probably heard these before.

5 The presumption of innocence, the Judge  
6 covered some of these with the general voir dire. The  
7 defendant starts out a trial, he's presumed to be innocent  
8 and the State overcomes that presumption by putting on  
9 evidence. But when you begin, just because the defendant  
10 has been arrested, indicted, or even we're going through  
11 this process, that's not evidence of his guilt. You have to  
12 wait for us to actually produce the evidence and then make  
13 your decision. Could you do that?

14 A. Yes.

15 Q. The burden of proof never shifts. The defense  
16 does not have to put on evidence. They very well may. In  
17 fact, most people assume they will, but they are not  
18 required to. That burden of proof always stays with the  
19 State. At the close of our case, if they haven't asked any  
20 questions or put on any evidence and you have that  
21 reasonable doubt, then you simply must find the defendant  
22 not guilty, if you don't think we have met our burden.

23 Could you do that and keep the burden of  
24 proof on the State of Texas?

25 A. Yes.

1 Q. That burden of proof goes to the indictment.  
2 We have to prove every portion of the indictment. If you  
3 have a reasonable doubt just on one element of it, one part  
4 of it, you are obligated to find the defendant not guilty.  
5 Could you do that?

6 A. Yes.

7 Q. Give you a small example. One of the elements  
8 we allege is the county it occurred in, Dallas County. If  
9 we even failed to prove Dallas County, some view that as a  
10 technicality, but the law doesn't. You would have to find  
11 him not guilty. I don't anticipate that would happen and if  
12 it did, I'm sure we would lose our jobs. But you can't help  
13 us out. You just have to be a neutral judge, kind of like a  
14 referee. Do you feel that you could do that?

15 A. Yes.

16 Q. And then another element or proposition of  
17 laws is the Fifth Amendment. If someone chooses to testify,  
18 you would judge them like any other witness. If they choose  
19 not to testify, though, you can't hold that against them.  
20 You have to just judge the case on the evidence you have  
21 heard. Could you follow that rule of law?

22 A. Yes.

23 Q. Okay. Now, your husband is in law enforcement  
24 now? A lot of jurors, obviously, respect the job the police  
25 do. In a criminal case police officers are called to

1 testify. However, you can't start them out ahead of other  
2 witnesses, as far as credibility goes, without hearing them  
3 first. You have to wait and judge them like you would any  
4 other witness. Do you feel that you can do that?

5 A. Yes.

6 Q. You recognize there are some good police  
7 officers, bad police officers, just like any other  
8 profession. Okay?

9 And one other area, the parole laws get a  
10 lot of publicity. In a capital murder situation, if someone  
11 is given a life sentence, we can tell you that they have to  
12 stay in prison forty calendar years before they become  
13 eligible for parole, day for day, forty calendar years. The  
14 law, also, the Judge will tell you, that you can't consider  
15 the parole laws in your deliberations. You have to assume a  
16 life sentence means a life sentence and then just base your  
17 answers to these questions on the evidence that you hear.  
18 Could you follow that instruction from the Court?

19 A. Yes.

20 Q. Okay. Now, you, like the other jurors in this  
21 case, heard some general news sometime back about this  
22 crime?

23 A. Yes.

24 Q. It received a lot of publicity. Can you tell  
25 us what you recall hearing?

1           A.       Um, I remember hearing generally about the  
2 officer's shooting, probably because it was Christmas Eve  
3 and received lots of publicity and then over the period of  
4 time, following and tracking and ultimately capturing the  
5 people.

6           Q.       Did you follow any of the subsequent trials?

7           A.       No.

8           Q.       All right. Again, when a case receives this  
9 much publicity, all the jurors have heard something about  
10 it. The law is simply this. Just because you have heard or  
11 followed it in the news doesn't make you ineligible to be a  
12 juror. What you have to be able to do is -- we can't ask  
13 you to forget about what you heard. But just base your  
14 decisions on what you hear in the courtroom. In other  
15 words, if you remember something different from what you saw  
16 on TV from what you heard in the witness box, you,  
17 obviously, can only make your decision on what you hear in  
18 the courtroom. That's going to be the more accurate  
19 information.

20                    Would you be able to follow that  
21 instruction and just base your decisions on what you hear in  
22 the courtroom and not anything that you read or heard on TV?

23           A.       Yes.

24           Q.       Your mind is open, then, and you would still  
25 require the State of Texas to prove to you beyond a

1 reasonable doubt that these allegations are true?

2 A. Yes.

3 Q. Okay. Do you have any questions of me? We've  
4 gone over a lot of information here pretty quickly. Any  
5 questions at all?

6 A. (Prospective juror shakes head.)

7 Q. Okay. I appreciate your patience.

8 MR. SHOOK: That's all the questions that  
9 I have at this time, Judge.

10 THE COURT: Ms. Busbee.

11 MS. BUSBEE: May it please the Court?

12 CROSS-EXAMINATION

13 BY MS. BUSBEE:

14 Q. You don't seem as uncomfortable as some of  
15 these other people that we've had up here and I appreciate  
16 you talking to us so frankly. Mr. Shook has covered the law  
17 very well and so I don't need to go over the same territory.  
18 I just have some specific questions for you.

19 First of all, I know that this law  
20 enforcement career for your husband, that's a new one?

21 A. Uh-huh.

22 Q. But do you think that it may affect you to sit  
23 on a jury where a police officer is killed and to look at  
24 the evidence in such a way that because your husband serves  
25 as a police officer, law enforcement official, that it would

1 be more upsetting to you and might affect you in some way?

2 A. I don't think that I would be, no.

3 Q. We gave you a witness list, extensive witness  
4 list. Did you have a chance to read over that?

5 A. Yes.

6 Q. Were there any names on that list that you  
7 thought you might know that person?

8 A. No.

9 Q. In your questionnaire we asked some general  
10 questions about the death penalty and you mention that --  
11 checked that you thought that the death penalty may be  
12 misused from time to time. Do you remember answering that  
13 or what you were thinking about when you said that? See,  
14 what I like about this is we give you the test and then we  
15 give you the information. So it's kind of unfair to ask you  
16 questions about certain things when you don't really know  
17 what you are answering.

18 A. Right.

19 Q. I guess -- from this table, I guess what we  
20 would like to be sure of is that a juror recognizes that  
21 just because someone has been found guilty of a capital  
22 murder, that he's not by any means, they are not necessarily  
23 going to receive the death penalty, that there are some --  
24 there are narrow, narrow steps that have to be taken before  
25 that person can be given the death penalty.

1           The first one is the probability question  
2     that we talked about and the second one is something that  
3     can't be answered until you have heard the facts of the  
4     case. But assuming that you have heard the facts of the  
5     case and the probability of future dangerousness and the  
6     intent or anticipation of taking a human life was proved to  
7     you beyond a reasonable doubt -- and we don't know at this  
8     point what the evidence would be or whether it would satisfy  
9     you. But let's say that it does, without even trying to put  
10    you -- pin you down to ask you what that might be, could you  
11    tell us that you could still consider voting yes on question  
12    No. 3, a vote that would result in a life penalty instead of  
13    a death penalty?

14           A.       Yes, I could.

15           Q.       Is there anything that's on your mind that you  
16    think we should talk to you about? We have this set series  
17    of questions that we ask, but sometimes there are things  
18    that jurors think they should share with us or tell us that  
19    might be important that we haven't asked.

20           A.       Not that I can think of.

21           Q.       Let me consult here with my co-counsel.

22                    MS. BUSBEE: I'll pass the juror, Your  
23    Honor.

24                    THE COURT: No further questions?

25                    MS. BUSBEE: No, Your Honor.

1 THE COURT: Thank you, ma'am. If you  
2 would, I'm going to have you wait outside just for a moment  
3 and we'll have you back in. Give us just a few minutes.

4 [Prospective juror out]

5 THE COURT: What says the State?

6 MR. SHOOK: May we have one moment,  
7 Judge?

8 THE COURT: All right. Find the juror to  
9 be qualified or not?

10 MR. SHOOK: Yes. We have no grounds for  
11 submission of cause at all, Judge.

12 THE COURT: Defense?

13 MS. BUSBEE: We have no grounds for  
14 submission.

15 THE COURT: Court finds, also, the juror  
16 to be qualified. What says the State?

17 MR. SHOOK: State will accept the juror.

18 MS. BUSBEE: The defense will accept the  
19 juror.

20 THE COURT: Thank you. You may be  
21 seated.

22 [Prospective juror in]

23 THE COURT: Ms. Holcombe, I want to  
24 inform you that you have been accepted as a juror in this  
25 case. And we have spent a lot of time with you today. You



1 have read the orientation guide, we've been over the law,  
2 and now this is probably a long period of time, but, once  
3 again, just put this in the back of your mind because we'll  
4 start this on November 10th.

5 What will happen is when you go back to  
6 your work at the American Heart Association, they are going  
7 to be, where have you been today? Because they know where  
8 you are, don't they?

9 PROSPECTIVE JUROR: Uh-huh.

10 THE COURT: Sure they do. And if you go  
11 back and tell them, well, I've been accepted on this jury,  
12 no doubt they are going to tell you their opinions. And you  
13 know what? These lawyers in the court are satisfied with  
14 your opinions. And because they weren't here today, they  
15 have not been through the whole process.

16 So what you have got to do is just shut  
17 it down. I'm going to instruct you, don't lie, you have got  
18 to tell your supervisor, but we're far enough out that you  
19 can tell your supervisors, I need to schedule these two  
20 weeks off. And just say -- just leave it jury duty. Don't  
21 be any more specific than that. If they have any questions,  
22 tell them they can call me directly and that will cure it.  
23 They won't want to do that. All right?

24 But if you start telling people that you  
25 are on this jury, they are going to start talking about it.

1 One of the instructions that I'm going to give you in  
2 writing and I will follow this up and you will have your  
3 paper, is you are to receive no information about this case  
4 other than from that witness stand right there that you are  
5 sitting in now.

6 So when this -- just don't read anything  
7 about it in the paper. If there is a news special,  
8 whatever, I don't think there will be, just nothing. You  
9 have already told us that -- I remember your words. I'll  
10 have to see the evidence for myself to make a decision.  
11 That's all we're asking you to do.

12 PROSPECTIVE JUROR: Okay.

13 THE COURT: Do you have any questions for  
14 me?

15 PROSPECTIVE JUROR: No.

16 THE COURT: All right. So again,  
17 schedule your time with work. Don't talk about this. Just  
18 kind of put it in the back of your mind. You have plenty of  
19 time to plan for it. If you will go with Sheriff Cook, he  
20 has a few other items that he needs to take care of at this  
21 time.

22 And you will receive another -- let me  
23 tell you what will happen. I don't know the exact date. I  
24 anticipate the week prior to November 10th, we'll have all  
25 the jurors back down here. But I don't know what day it's

1 going to be.

2 Sheriff, how long was it, two hours last  
3 time, three, for orientation?

4 SHERIFF COOK: It was about two and this  
5 one we're planning on an hour or less.

6 THE COURT: It will be about another hour  
7 or hour and a half of orientation. That's with the whole  
8 group here at once so I can give everybody the same  
9 instructions and that will be prior to the 10th and  
10 hopefully we'll get that out to you when that would be. So  
11 you will have one more day down here before testimony will  
12 actually begin.

13 If you would, go with the Sheriff and we  
14 appreciate your time.

15 [Prospective juror out]

16 THE COURT: Mr. Peterson.

17 [Prospective juror in]

18 THE COURT: Good afternoon, sir, how are  
19 you?

20 PROSPECTIVE JUROR: Doing good.

21 THE COURT: And your name is Eugene Alan  
22 Peterson?

23 PROSPECTIVE JUROR: That's correct.

24 THE COURT: I see you brought in the  
25 orientation guide. Have you had an opportunity to read that

1 --

2 PROSPECTIVE JUROR: Yes, I did.

3 THE COURT: -- with the witness list?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Very well. I don't have  
6 anything at all to add to the guide, other than you  
7 understand you will be going through the law and my job is  
8 to be sure that you understand the law we'll be using in  
9 this case. Please ask questions. This is the only time  
10 that you will be able to. If you don't understand the  
11 concept the lawyer is trying to explain, say I don't  
12 understand, if they can't explain it, I'll try. The  
13 objective is for you to understand.

14 The only question that I have for you,  
15 sir, is, I gave you the timeline, this trial shall begin on  
16 the 10th of November. Do you have any problems serving this  
17 Court for those two weeks?

18 PROSPECTIVE JUROR: At this time I don't  
19 see a problem.

20 THE COURT: Any questions?

21 PROSPECTIVE JUROR: Not yet.

22 THE COURT: Mr. Wirskey?

23 MR. WIRSKYE: Thank you, Judge. May it  
24 please the Court?

25 EUGENE PETERSON,

1 having been duly sworn, was examined and testified as  
2 follows:

3 DIRECT EXAMINATION

4 BY MR. WIRSKYE:

5 Q. Mr. Peterson, how are you this afternoon?

6 A. I'm fine.

7 Q. My name is Bill Wirskye and I'll be the  
8 assistant DA that will be visiting with you for the next few  
9 minutes and talk a little bit about some of the information  
10 in your questionnaire, how you feel about the death penalty,  
11 what your thoughts are there, and follow up a little bit  
12 about the law that may apply in this type of case. What  
13 exactly do you do for a living?

14 A. I work at a television station.

15 Q. What station is that?

16 A. KDAF, WB 33.

17 Q. I notice you said you were a broadcast  
18 engineer?

19 A. Yes.

20 Q. I hate to show my ignorance, but what exactly  
21 does that mean?

22 A. Basically, take care of the equipment side of  
23 things.

24 Q. Do you work on a newscast or any particular  
25 programs?

1 A. Not directly, you know, it's just generally  
2 take care of all the equipment.

3 Q. You are not an on-air guy?

4 A. Oh, no.

5 Q. Behind the scenes technical type?

6 A. Yes.

7 Q. I notice -- you probably don't remember this.

8 It's a little unfair of us to even refer back to these  
9 questionnaires that you filled out, I guess, in May. But on  
10 the last page, like so many other people, you said that you  
11 would prefer not to be chosen necessarily. And I was just  
12 curious what you were thinking when you put that down?

13 A. Um, it would be an awesome responsibility, I  
14 think.

15 Q. Because of the type of case it is?

16 A. Yes.

17 Q. Okay. And you have told us, I guess, in a  
18 very general way that you are in favor of or support the  
19 death penalty; is that right?

20 A. Yes.

21 Q. Is that a fair statement?

22 A. Yes.

23 Q. What value or utility do you see in, you know,  
24 the State of Texas, I guess, having a death penalty?

25 A. Well, in a way it's a deterrent because he

1 won't do it again. But in some cases it's just -- it's  
2 justified for society to do that.

3 Q. Okay. Kind of an intellectual belief or  
4 religious belief or -- just trying to get a grasp of where  
5 you are coming from on that.

6 A. Intellectually, I guess.

7 Q. Is it something you have been in favor of your  
8 adult life?

9 A. For most of it, yeah, there was a time when I  
10 was younger when I didn't quite believe in it, but --

11 Q. You think the older people get, the more  
12 conservative they get? At least that applies to me --

13 A. Generally speaking.

14 Q. -- I don't know if it applied to you. You  
15 said that you had a daughter, I guess, that didn't  
16 necessarily agree with the death penalty; is that right?

17 A. That's true, but --

18 Q. Okay. She's how old, 22 or --

19 A. Twenty.

20 Q. Okay. Is that something that y'all have had  
21 discussions about or she feels strongly about or just --

22 A. I don't know how strongly she feels, but we  
23 don't, you know, discuss it in depth or anything.

24 Q. I would hope you wouldn't necessarily, unless  
25 you do what we do for a living. But you also said that you

1 were -- I guess, had read an article, a magazine article,  
2 about the death penalty, is that right, "New American  
3 Magazine"?

4 A. Uh-huh.

5 Q. Can you tell us about that article?

6 A. It's been some time. You know, trying to  
7 remember the details.

8 Q. What type of magazine is that? I hate to show  
9 my ignorance, but I'm not necessarily familiar with it.

10 A. It's a magazine published by the John Birch  
11 Society, so it's quite conservative in most of its  
12 viewpoints.

13 Q. I notice you consider yourself fairly  
14 conservative?

15 A. Uh-huh.

16 Q. Was it a pro or con article? One way or the  
17 other on the death penalty?

18 A. It was to dispell the myths behind not having  
19 it and why a lot of the reasons people come up with for not  
20 having it are not well thought out and not necessarily true.

21 Q. Okay. And I guess that article influenced you  
22 enough for you to --

23 A. Well, it strengthened my belief.

24 Q. All right. The belief that you already had?

25 A. Uh-huh.



1 Q. Okay. Is there any particular type cases when  
2 you think about the death penalty, a particular type of fact  
3 situation or scenarios, that come to mind when you think  
4 about the appropriate case for the death penalty or capital  
5 punishment?

6 A. Um, probably any case of a really heinous  
7 nature, you know, where somebody was just so totally lacking  
8 in concern for human beings that -- sure.

9 Q. Any particular case you may have heard about  
10 in the news or media that comes to mind when you think about  
11 an appropriate case for that type of punishment?

12 A. At this time I can't --

13 Q. That's fine. I wouldn't expect you to be able  
14 to, very frankly. Let me talk to you just briefly a little  
15 bit about kind of your general impressions of our criminal  
16 justice system. Do you think it works pretty well or how  
17 would you describe your thoughts about that?

18 A. There's no doubt that it is somewhat slanted  
19 toward those who are able to afford better justice. But for  
20 all its flaws, it's still the best system in the world, I  
21 think.

22 Q. Again, I don't know if you remember your  
23 answers you put down. At one point I think you said, I  
24 guess, one of the potential dangers in the system is that  
25 maybe some of the participants would get overly emotional

1 about it, I guess, I think the words you used. I don't know  
2 if you recall that, but I was curious what you were thinking  
3 when you put that down, overly emotional or overly involved  
4 in the case, maybe taking it too personally, I guess.

5 A. Yeah.

6 Q. Is that a concern of yours or --

7 A. I'm not sure.

8 Q. Okay. Fair enough. Particularly with the  
9 death penalty, let me kind of run something by you and see  
10 what you think. We often give these fact situations or  
11 scenarios. You know, I think when a lot of people think  
12 about a capital punishment case, you know, in Texas capital  
13 punishment is just limited to a certain type of murder case.  
14 You kill someone during the commission of a robbery or kill  
15 a particular person like a police officer on duty, fireman,  
16 child under six. I think often people think of these crimes  
17 as committed by one person. In reality a lot of crimes are  
18 committed by more than one individual, groups or gangs of  
19 people.

20 And, you know, the law doesn't  
21 necessarily require that in order to be eligible for capital  
22 punishment, a capital murder conviction, and a death  
23 sentence, that you necessarily have to be the person that  
24 pulled the trigger, the person that caused the death. In  
25 certain circumstances the law allows us to prosecute people

1 and ask for the death penalty when those people did not pull  
2 the trigger. What do you think about that type of scenario?

3 A. I would -- I agree with that, because if you  
4 are an accomplice, you share in the responsibility, even if  
5 you didn't actually pull the trigger. You didn't stop it,  
6 either.

7 Q. Okay. So -- and we talk to quite a few people  
8 and we give them that example. You know, some people tell  
9 us, well, if you didn't actually pull the trigger or cause  
10 the death, then I'd just take the death penalty off the  
11 table for you. I would limit the death penalty just for the  
12 person that pulled the trigger.

13 And I take it you don't feel like that,  
14 that you could keep an open mind and maybe a death sentence  
15 for a nonshooter; is that right?

16 A. Yeah.

17 THE COURT: Yes or no, she has to record  
18 everything that you say. It's perfectly normal, perfectly  
19 normal. You have not been in this situation before, but she  
20 can't record a head nod or uh-huh.

21 PROSPECTIVE JUROR: Right.

22 Q. (By Mr. Wirskey) Mr. Peterson, that is,  
23 basically, what the law envisions. We call it sometimes the  
24 law of accomplices or in Texas we call it the law of  
25 parties, if someone is an accomplice or a party to an

1 offense.

2 Mr. Shook and I decide an offense.

3 Mr. Shook and I decide he's going to have the gun. He's  
4 going to pull the gun on the teller and I'm going to come in  
5 and just grab the money. And we get together and plan this.  
6 And I know what a violent person he is and what a hair  
7 temper he has.

8 And we go in there and rob that bank and  
9 for some reason he shoots and kills the teller, you know.  
10 Then, obviously, he's committed capital murder and could be  
11 prosecuted for the death penalty. And under certain  
12 circumstances the law would, also, allow me, the nonshooter,  
13 to be prosecuted for the death penalty.

14 And I take it that you would agree with  
15 that depending on the facts and circumstances?

16 A. Generally, yes.

17 Q. Okay. Is there anything that you can think of  
18 off the top of your head that would be important when you  
19 are looking at someone like me, a nonshooter, when you are  
20 talking about getting a potential death penalty?

21 A. At this time I can't.

22 Q. Okay. And the law, basically, is there's a  
23 couple of different ways to find me guilty of capital  
24 murder, the nonshooter, you know, if I help, encourage, or  
25 aid him, I can be found guilty. Or even if I didn't want

1 anybody to get killed, if I just signed up for a robbery, if  
2 I should have anticipated a life would be taken, then I can  
3 be held guilty. And I knew he went in with a loaded gun, I  
4 knew he had a bad temper, and he was the type of person that  
5 may shoot or kill someone for no reason. Obviously, under  
6 the Texas law I could be found guilty and potentially face  
7 the death penalty.

8 And that sounds like that's something  
9 that you generally agree with, right?

10 A. Yes.

11 Q. One thing in Texas, a lot of people are not  
12 aware of this when we ask a jury in a death penalty case  
13 whether to assess the death penalty or not, it's not just,  
14 you know, a thumbs up or thumbs down on the death penalty.  
15 The system we have, and I'll refer you to this chart, is if  
16 you find somebody guilty of capital murder, we ask the jury  
17 to answer these. They are called Special Issues. I just  
18 call them questions. We ask the jury to answer these  
19 questions and depending on how the jury answers these  
20 questions, that ultimately determines what sentence will be  
21 imposed on the defendant, whether it be a life sentence or  
22 whether they actually receive the death penalty. We'll talk  
23 about them a little bit more in depth in a little while.

24 But I'll run them through you real quick.  
25 The first question, basically, asks whether the person is a

1 continuing threat to society or future danger to society.  
2 If the answer is yes to that, you move on to the second  
3 question. That kind of deals with the scenario we have just  
4 been talking about, whether the person was the triggerman or  
5 if he wasn't the triggerman, did he intend there be a death  
6 or did he anticipate there be a death. If the answer to  
7 that is yes, then you move on to the final question or  
8 Special Issue No. 3, which is kind of a safety valve, safety  
9 net type question. And that just asks the jury to see if  
10 there's anything mitigating that you have heard, the facts  
11 of the crime or the defendant's background, such that you  
12 think it's sufficient to spare his life and give him that  
13 life sentence, other than the death penalty.

14 That's kind of the scheme we have and  
15 that's what we ask jurors to do. You probably weren't aware  
16 of that before you walked in here?

17 A. No, I was not.

18 Q. Is that something that you generally think  
19 that you could agree with, that type of thing?

20 A. Yes, I do.

21 Q. Okay. Have any hesitations on that? You  
22 didn't sound like -- you might have a little hesitation?

23 A. No, just things you definitely have to  
24 consider before imposing the death sentence.

25 Q. Okay. You would feel comfortable with that

1 scheme?

2 A. Yes.

3 Q. And we talk to quite a lot of people and there  
4 are a lot of people, maybe such as yourself, that have  
5 thought, intellectually at least, in favor of the death  
6 penalty or in the abstract in favor of the death penalty as  
7 a punishment, but when you get down here actually in a  
8 courtroom and you may be called on to get on that jury and  
9 you are sitting here looking at a living, breathing human  
10 being, the defendant who is on trial, it becomes quite  
11 another thing.

12 A. Yeah.

13 Q. And, you know, I'll be honest with you.  
14 That's -- I'll put my cards on the table. I mean, we think  
15 that we have the nature and type of evidence that's going to  
16 cause a jury to find this man guilty of capital murder as a  
17 nontriggerman, as a party, or an accomplice. We, also, feel  
18 we're going to have the type of evidence that's going to  
19 cause the jury to answer those questions in such a way that  
20 ultimately one day the man down at the end of the table will  
21 be lying dead on a gurney down in Huntsville.

22 And I hate to put too fine a point on it,  
23 but that's what we're here about.

24 A. Right.

25 Q. And there are some people we talk to that are

1 not necessarily comfortable making those decisions or taking  
2 a pen in hand and answering those questions in such a way  
3 that may result in the death of another human being. And if  
4 you feel that way, that's fine. But we kind of need to know  
5 before we get you in the jury box.

6 Are you comfortable participating in that  
7 type of process?

8 A. Not comfortable, but if it comes down to it, I  
9 would do my best.

10 Q. Okay. If the facts and evidence showed you he  
11 was guilty of capital murder and the questions should be  
12 answered yes, yes, and no, would you be able to do that? Do  
13 your duty?

14 A. I would hope so.

15 Q. Okay.

16 A. Until it comes down to it, it's hard to know.

17 Q. Being a lawyer, we a lot of times talk in  
18 terms of yes or no. As the Judge said, we have to write it  
19 down. So when I hear an answer with any equivocation, I  
20 have to go in and explore it.

21 It's really -- it really boils down to  
22 this. This is our chance to talk to you, both sides.  
23 Neither side wants to put anyone in an uncomfortable  
24 situation. And, you know, once you are over on the jury,  
25 it's too late --



1 A. Right.

2 Q. -- if something comes up and you are back in  
3 the jury room with the other jurors. So this is kind of our  
4 chance to talk about it. Probably comfortable is a bad  
5 word, but at least if you think that you are the type person  
6 that can participate in the process and hold the State to  
7 their burden and follow the law, a fair trial for Mr.  
8 Murphy, and depending on the facts and the law make whatever  
9 decision is appropriate, even if it results in the death  
10 penalty.

11 Do you think that you are the type person  
12 that can do that?

13 A. I believe so.

14 Q. Okay. Let me ask you to do this. On the last  
15 page, you may have already looked at that -- but I'll ask  
16 you to look at it again. On the back of the last page is  
17 the indictment in this case. Even if you have already  
18 looked at it, take a few minutes to look over it again.

19 A. [Prospective juror complies.]

20 MR. WIRSKYE: Your Honor, can we  
21 approach?

22 THE COURT: You may.

23 (Bench conference)

24 THE COURT: Mr. Peterson, I appreciate  
25 your time and service to the Court here today. The parties

1 have agreed to excuse you from jury service in this case, so  
2 you do not have to come back. And all I can do is thank you  
3 for your time. You are free to go.

4 [Prospective juror out]

5 THE COURT: Ready for Ms. Ervin.

6 [Prospective juror in]

7 THE COURT: Good afternoon, Ms. Ervin.

8 How are you?

9 PROSPECTIVE JUROR: I'm fine.

10 THE COURT: Doing okay?

11 PROSPECTIVE JUROR: Yeah.

12 THE COURT: A little bit nervous when you  
13 are the focus of attention versus hiding in the Central Jury  
14 Room with five hundred other people?

15 PROSPECTIVE JUROR: Yeah.

16 THE COURT: This is the only time that  
17 the lawyers will ever have to talk to you individually about  
18 their case and your jury service. And my job is to be sure  
19 that you understand the law.

20 PROSPECTIVE JUROR: Okay.

21 THE COURT: That's why I provided that  
22 guide for you. Did you have an opportunity to read that and  
23 go through it?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: Did it cause more questions

1 than answers?

2 PROSPECTIVE JUROR: Yeah. I have a  
3 question about -- it's on page 4. I'm not going to assume,  
4 but what do you mean by the word "actor"?

5 THE COURT: Actor?

6 PROSPECTIVE JUROR: Yeah.

7 THE COURT: It could be a codefendant.  
8 We use the word "party." Sometimes you hear on TV  
9 "accomplice."

10 PROSPECTIVE JUROR: All right.

11 THE COURT: You can substitute defendant,  
12 as well. You have someone who is not a defendant, but also  
13 an actor in the crime.

14 PROSPECTIVE JUROR: I wanted to know if I  
15 guessed it right.

16 THE COURT: Did you guess it right?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Good. We appreciate  
19 questions like that. Means you read it and are thinking  
20 about it. The attorneys will go over in more detail how  
21 that law all interacts together, but my job is to be sure  
22 that at the end of this process you understand what it  
23 means.

24 PROSPECTIVE JUROR: Okay.

25 THE COURT: If you don't understand the

1 questions, you don't understand the law, say, Judge, I don't  
2 understand. Try to explain it to me again and we'll do  
3 that.

4 PROSPECTIVE JUROR: No problem.

5 THE COURT: My question to you at this  
6 point is will you be able to serve this Court for two weeks  
7 beginning November 10th?

8 PROSPECTIVE JUROR: Um, yes.

9 THE COURT: Mr. Shook?

10 MR. SHOOK: May it please the Court.

11 JILL ERVIN,

12 having been duly sworn, was examined and testified as  
13 follows:

14 DIRECT EXAMINATION

15 BY MR. SHOOK:

16 Q. Ms. Ervin, my name is Toby Shook and I'm going  
17 to ask you questions on behalf of the State. There aren't  
18 any right or wrong answers to any of our questions. We just  
19 want your honest opinions, all right?

20 A. Okay.

21 Q You have been pretty honest in your  
22 questionnaire. We appreciate you taking the time to fill  
23 that out. Believe it or not that saves you time.

24 A. This is a little distracting.

25 Q. You have to be able to speak up close enough.

1 You are close to her and your voice projects well. Anyway,  
2 I'm going to ask you some questions based on some  
3 information that you put in here and also generally about  
4 the laws and the death penalty and how you feel about it.

5 A. Okay.

6 Q. How long have you lived here in the Dallas  
7 area?

8 A. Been here for about 13 years.

9 Q. Where did you live prior to that?

10 A. Grand Prairie.

11 Q. So you have lived in the Metroplex?

12 A. I've been in Dallas -- well, I've been in  
13 Texas, Dallas, first since 1972.

14 Q. All right. Let me ask you, on the death  
15 penalty we asked -- you said that you are in favor of it as  
16 a law. And I don't know if you remember your answers, but I  
17 like to give you your answer and then let you follow up on  
18 it. Okay?

19 A. Okay, good.

20 Q. Because we asked you to explain and you were  
21 pretty straightforward. You said if a person killed  
22 someone, he or she should have the same fate. Follow up on  
23 that. You are in favor of the death penalty as a law. What  
24 purpose do you think the death penalty serves?

25 A. Um, well, it's, I think for most people it's a

1 deterrent.

2 Q. Most people, it's a deterrent?

3 Q. You do that, I mean, it's not like you crashed  
4 into -- okay. It's not like you crashed into a car or made  
5 a mistake. This is --

6 Q. An intentional act?

7 A. Yeah. This is the word, that anyone can do.

8 Q. Have you followed any cases in the media that  
9 you thought were worthy of the death penalty or locally or  
10 nationally?

11 A. No, no.

12 Q. Okay. When you think of a capital murder case  
13 or a death penalty case, what types of cases do you think  
14 of?

15 A. As a rule I don't generally watch the news.  
16 The last big case, I guess, that I followed or paid any  
17 attention to was the O. J. Simpson trial, so that's pretty  
18 much.

19 Q. What were your thoughts about that case?

20 A. It was horrible. And I believed that he did  
21 it.

22 Q. Okay. And in 1994 you wrote that your cousin,  
23 Ted, was shot to death by someone robbing a store. Was that  
24 here locally?

25 A. Yes, it was.

1 THE COURT: Did you say husband?

2 PROSPECTIVE JUROR: No, it was my  
3 husband's cousin, Ted. He owned a pawnshop and --

4 Q. (By Mr. Shook) They came in and robbed?

5 A. They came in and robbed and they shot him and  
6 his business partner and they killed him.

7 Q. Was he a former Dallas police officer?

8 A. I don't believe so. No, no, he wasn't.

9 Q. Was his shop in the Pleasant Grove area?

10 A. No. It was close to the VA Hospital. It was  
11 on the same -- Lancaster, it was on Lancaster Road.

12 Q. All right. I thought it was a different case.

13 A. Sorry.

14 Q. Was anyone arrested in that case?

15 A. No.

16 Q. So it's still unsolved?

17 A. Yes.

18 Q. That case, you said, it influenced you, the  
19 way that you feel about the death penalty?

20 A. Well, it -- it wasn't -- it wasn't a case. If  
21 I put down case, I'm sorry. Nothing happened.

22 Q. I mean that event?

23 A. Yes. It was he had three beautiful children  
24 and my cousin, Leslie, and --

25 Q. Pretty emotional event?

1 A. Yeah.

2 Q. In fact, it still brings a lot of emotion to  
3 you?

4 A. Sorry.

5 Q. That's okay. We have that happen a number of  
6 times. Do you think that type of case, because you were  
7 close or obviously caused effects on his family, and then  
8 this is a similar type case, that that might affect you in  
9 your deliberations or possibly?

10 A. I don't think so, because I don't know any of  
11 the particulars.

12 Q. Sometimes we have cases, because you don't  
13 know what type of case you are going to be brought down on  
14 --

15 A. Right.

16 Q. -- and, obviously, most people don't have this  
17 situation, fortunately. If this was a burglary case or DWI,  
18 you probably wouldn't have a problem at all. But since you  
19 have been close to a similar fact situation, sometimes it  
20 brings up the emotions and that's fine, you know. We can  
21 always have you on another panel.

22 A. Okay.

23 Q. But you have a little emotion there and I  
24 understand that.

25 A. I'm sorry.



1 Q. No. We've had that before and that's why we  
2 ask you that question.

3 A. Okay.

4 Q. And because you were close to that situation  
5 and saw the effects, I'm just wondering if that might be a  
6 factor or possibly could come up during, you know, the --  
7 obviously, you start hearing similar facts in this type of  
8 thing.

9 A. I don't think that I would get emotional.  
10 Because I don't -- okay. I don't know any of these  
11 particulars and I haven't -- and I don't even know who this  
12 person is. Apparently it's fairly recent. But in 2000 I  
13 was going through a divorce, so I wasn't paying attention to  
14 anything that was going on in the news.

15 Q. All right.

16 MR. SHOOK: Your Honor, I think that we  
17 have come to an agreement.

18 MS. BUSBEE: Yes.

19 THE COURT: Ms. Ervin, we appreciate your  
20 honesty and willingness to serve, even on this type of case.  
21 But the lawyers think it may be just a little too close for  
22 this type of case and have agreed to excuse you from jury  
23 service.

24 I want to thank you for your time and  
25 coming back down here and having to relive that memory, but

1 you won't have to serve any further on this case. So you  
2 are free to go.

3 PROSPECTIVE JUROR: Thank you.

4 THE COURT: Thank you.

5 [Prospective juror out]

6 [End of Volume]

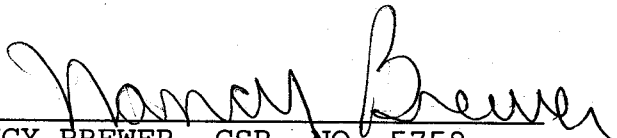
1 STATE OF TEXAS \*

2 COUNTY OF DALLAS \*

3 I, NANCY BREWER, Official Court Reporter for the 283rd  
4 Judicial District Court, do hereby certify that the above  
5 and foregoing constitutes a true and correct transcription  
6 of all portions of evidence and other proceedings requested  
7 in writing by counsel for the parties to be included in this  
8 volume of the Reporter's Record, in the above-styled and  
9 numbered cause, all of which occurred in open court or in  
10 chambers and were reported by me.

11 WITNESS MY OFFICIAL HAND on this the 4 day of

12 March, 2004.

13  
14  
15   
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REPORTER'S RECORD

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VOLUME 8 OF 6 VOLUMES

TRIAL COURT CAUSE NO. F01-00328-T

STATE OF TEXAS \* IN THE DISTRICT COURT  
VS. \* DALLAS COUNTY, TEXAS  
PATRICK HENRY MURPHY, JR. \* 283RD DISTRICT COURT

\*\*\*\*\*

INDIVIDUAL VOIR DIRE

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**FILED IN**  
COURT OF CRIMINAL APPEALS

MAR 9 - 2004

Troy C. Bennett, Jr., Clerk

On the 29th day of August 2003, the following  
proceedings came on to be heard in the above-entitled and  
numbered cause before the Honorable Vickers L. Cunningham,  
Sr., Judge Presiding, held in Dallas, Dallas County, Texas.

Proceedings reported by machine shorthand.

**ORIGINAL**

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PROSPECTIVE JUROR INDEX

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P R O C E E D I N G S

THE COURT: Ms. Portillo.

[Prospective juror in]

THE COURT: Good morning.

PROSPECTIVE JUROR: Good morning.

THE COURT: How are you?

PROSPECTIVE JUROR: Okay.

THE COURT: And your name is Georgina  
Portillo?

PROSPECTIVE JUROR: Yes.

THE COURT: Thank you for being here on  
time. You were the second one we were going to talk to this  
morning, but since you were here first and early and read  
that, we got you in and probably saved you about an hour and  
a half. Sound good?

PROSPECTIVE JUROR: Yeah.

THE COURT: You recall being here back in  
May and filling out that short questionnaire for us?

PROSPECTIVE JUROR: Short?

THE COURT: Yes, ma'am. You recall that  
you were under oath and sworn in and as you read you are  
still under oath today.

PROSPECTIVE JUROR: Yes.

THE COURT: The main thing that the  
lawyers ask is just tell the truth, give your honest

1 opinions, don't think he's going that way, she's going that  
2 way. Just say what is on your mind. There are no wrong  
3 answers.

4 My job is to be sure that you understand  
5 the law and you have read very quickly this morning that the  
6 law in this case can get somewhat complicated. That's why  
7 the lawyers are going to spend some time with you this  
8 morning, go over the law, and if you don't understand it,  
9 say I don't understand your question or would you rephrase  
10 that and, as I said, the objective is for you to be able to  
11 understand the law. And they will ask you, can you follow  
12 the law? Fair enough?

13 PROSPECTIVE JUROR: Okay.

14 THE COURT: The only question that I have  
15 for you, myself, is this trial is scheduled to begin on  
16 November 10th. Will you be able to give the Court two weeks  
17 of your time?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: Very good. Mr. Shook?

20 GEORGINA PORTILLO,  
21 having been duly sworn, was examined and testified as  
22 follows:

23 DIRECT EXAMINATION

24 BY MR. SHOOK:

25 Q. Ms. Portillo, my name is Toby Shook. I'm



1 going to ask you questions on behalf of the State. You have  
2 been on a jury before so you kind of know how this works a  
3 little bit. Although normally we select a jury from a large  
4 panel, which I'm sure was done in your last case that you  
5 served on, but -- and the questions were asked of the panel  
6 as a whole and few individual questions.

7 But because it's a capital murder case  
8 where the State is seeking the death penalty, we have this  
9 process where we talk to each juror individually. I know  
10 that can be a little intimidating, at least make you feel  
11 like you are on trial. Most people come in feeling that  
12 way. But we try to make you as relaxed as possible and you  
13 can ask us questions anytime. We'll ask you a whole lot of  
14 questions.

15 I'll go over some things in your  
16 questionnaire. I'm going to ask you how you honestly feel  
17 about the death penalty, capital murder, some of the laws  
18 that apply to this case. All right?

19 A. Okay.

20 Q. You were born and raised here in Dallas?

21 A. Yes.

22 Q. And have worked here all your life. Let me --  
23 let me ask you this. The Judge told you the trial should  
24 last two weeks at the most and you indicated to him you  
25 didn't think -- obviously, it would be an inconvenience, but

1 that wouldn't be a problem for you, if you were called to  
2 sit down here for two weeks; is that right?

3 A. That's correct.

4 Q. Okay. Let's talk, since you have had  
5 experience in a trial, you put on your questionnaire that it  
6 was a murder case and the defendant was sentenced to 80  
7 years?

8 A. Yes.

9 Q. How long ago was that?

10 A. Um, maybe a year and a half to two years ago.

11 Q. Okay. What -- tell us a little bit about what  
12 you remember about the case, what type of facts, or what did  
13 it involve?

14 A. Well, it involved drugs. Apparently somebody  
15 knew somebody took them to another person's house. That  
16 person came back alone without the mutual friend and I guess  
17 he wanted to take his drugs or something like that and  
18 people shot at each other and the guy that lived at the  
19 apartment ended up dead.

20 Q. Ended up dead?

21 A. Uh-huh.

22 Q. So it was people involved in a drug  
23 transaction?

24 A. Something like that, yeah.

25 Q. And they started shooting and one died?

1 A. Uh-huh.

2 Q. Okay. How long did the trial last? Do you  
3 remember?

4 A. Maybe two days and then we had -- were  
5 sequestered one night or something like that, not too long.

6 Q. So it wasn't a long process?

7 A. No, not too long.

8 Q. Did the defendant testify at trial?

9 A. No, I don't think so, but I'm not sure.

10 Q. Was a previous criminal record put on in the  
11 punishment stage? Do you remember?

12 A. No, I don't think -- and I don't remember.

13 Q. But primarily the punishment that was given  
14 was just over the fact that a life was taken and the way it  
15 was taken, the facts of the offense?

16 A. Correct.

17 Q. How did the deliberations go? Were they  
18 pretty smooth? Or sometimes jurors tell us they were in  
19 pretty much agreement and others tell us there were horrible  
20 arguments back there.

21 A. No, it went pretty smooth. I think where we  
22 had the problem was determining the actual penalty, the  
23 actual time, or what have you.

24 Q. And you came up with 80 years. How was that  
25 arrived at?

1           A.       Well, I mean, personally mine was -- I believe  
2     in the death penalty and everything, but to be one to  
3     actually say, to make that decision, it's kind of hard and I  
4     think a lot of us felt that way, so we took apparently the  
5     next best step we thought was to make it a permanent time  
6     there.

7           Q.       Eighty years, was this case being tried for  
8     the death penalty or was just the --

9           A.       I think it may have been. I'm not sure.

10          Q.       Well, that's the next area I want to get into  
11     is how you feel about the death penalty. You told us that  
12     you believe in it as a law?

13          A.       Yeah.

14          Q.       And you believe in the saying an eye for an  
15     eye?

16          A.       Right.

17          Q.       Is that something that you were growing up or  
18     taught as a child and you grew in maturity and believed in  
19     the death penalty?

20          A.       Yes. Basically out of my religion-type thing.

21          Q.       What purpose do you think the death penalty  
22     serves?

23          A.       Um --

24          Q.       As a law, as a goal for punishment, just  
25     punishment for punishment's sake, or to deter other people

1 from committing the crimes or --

2 A. Um, I guess I do believe that it does take  
3 that person out of society, if they have done something  
4 horribly wrong.

5 Q. Have you followed any cases or there's some  
6 types of cases that you believe the death penalty should be  
7 used for anything that you have seen in the news or your  
8 personal beliefs?

9 A. I don't really follow too much on them. I do  
10 believe where children are affected or killed and things  
11 like that or even police officers. I do believe that they  
12 are there to protect and serve as a community, so we should  
13 provide their protection.

14 Q. So you believe the murder of a police officer  
15 is one of the types of crimes that the death penalty should  
16 be considered?

17 A. Yes.

18 Q. Okay. Let me ask you this, while I'm thinking  
19 about it. This case received a lot of publicity when it  
20 occurred and almost every juror has mentioned that they saw  
21 something on TV and radio. That's natural. So we want to  
22 talk to every juror about what they remember about the case.

23 What do you remember reading or seeing on TV  
24 when it occurred?

25 A. Um, not very much to tell you the truth. I

1 remember that -- I mean, I know the particular area that it  
2 occurred at, that there were several, about four or five, I  
3 guess, guys that were involved in that when they finally  
4 caught them, I think, and that's really about it.

5 Q. Okay. Did you ever follow any of the trials  
6 after they were caught?

7 A. No.

8 Q. Do you think that would influence you in any  
9 way what you read or heard about the trial?

10 A. No, I don't know very much of it.

11 Q. That's -- the law is, if you read something,  
12 you have to be able to put that away and just determine the  
13 case based on the evidence. And you wouldn't have a problem  
14 doing that?

15 A. No.

16 Q. Let's talk about, a little more about the  
17 death penalty. The death penalty in Texas is reserved for  
18 certain intentional murders, not every intentional murder.  
19 You can have some bad killings and they couldn't get the  
20 death penalty, but intentional killings that occur with some  
21 aggravated facts. And you mentioned a few. Murders that  
22 occur during the course of felonies such as robbery,  
23 murdering someone while robbing a 7-Eleven store, killing  
24 the clerk, that could be a death penalty case. Murder or  
25 kidnapping or burglary, someone breaking into a house and

1 they killed the homeowner, during a rape, during an arson.

2 Also, murder of a specific victim like a  
3 police officer on duty, fireman on duty, or prison guard,  
4 child under the age of six, would be a death penalty case,  
5 or murder of more than one person in the same transaction or  
6 series of transactions, mass murder, that sort of thing, or  
7 a hitman situation, someone kills someone for money or  
8 profit.

9 But those are the specific types of  
10 situations that is reserved for the death penalty, at least  
11 consideration of the death penalty in Texas. That list I've  
12 gone over, do you agree that those types of crimes are the  
13 types that could be appropriate for the death penalty?

14 A. Yes, I do.

15 Q. If it were up to you, would you expand it and  
16 include other types of murders or other types of crimes?

17 A. Um, I don't know, possibly.

18 Q. Possibly?

19 A. Uh-huh.

20 Q. Now, let's get down to another area. A lot of  
21 people tell us they believe in the death penalty. Some  
22 people told us they are against it, for religious reasons,  
23 moral objections. Not everyone that's for the death penalty  
24 is comfortable or can sit in that type case.

25 We want to put all our cards on the table.

1 The way a death penalty case operates, you have the  
2 guilt/innocence stage where we have to prove the defendant's  
3 guilt. And then if we do that, we move to the punishment  
4 phase. And in the punishment phase, you hear additional  
5 evidence. Then you make your decisions, looking at what  
6 happened in the crime and any new evidence that you heard  
7 about their background and then you get these questions.  
8 And I'll go over the questions in a little more detail in a  
9 little while.

10 But, basically, the questions ask is the  
11 defendant a continuing danger to society? Did he cause the  
12 death or anticipate that a death would occur? And is there  
13 any mitigating evidence that a life sentence should be  
14 imposed rather than a death sentence? The jury does not  
15 write death or life in, but they answer these questions.

16 And if you answer yes to the first two  
17 and no to the mitigating question, the Judge would have no  
18 choice. He would sentence the defendant to death. If they  
19 are answered any other way, he would get a life sentence.  
20 But those are the only two choices, once he's been found  
21 guilty of capital murder, a death sentence or life sentence,  
22 and that's determined by how the jury answers those  
23 questions.

24 Are you familiar with the method of  
25 execution in Texas?



1 A. No, not really.

2 Q. The procedures are the same. And they're  
3 covered sometimes on one of those high profile cases, that  
4 sort of thing. But the procedures are the same. They would  
5 be the same in this case. If Mr. Murphy was found guilty  
6 and these questions are answered yes, yes, and no, he would  
7 be sentenced to death by the Judge and he would be placed on  
8 death row. He would wait in a cell. I can't tell you how  
9 long, but at some point in time Judge Cunningham would then  
10 issue a date of execution.

11 Just prior to that date, the day before,  
12 he would be moved from death row to downtown Huntsville  
13 where there is a prison unit. On the date of his execution  
14 he would be given an opportunity to meet with his family,  
15 friends, a minister. He would be given an opportunity for a  
16 last meal.

17 But at 6:00 p.m. by law the executions  
18 take place. He would be taken to the execution chamber. He  
19 would be placed on a gurney, because the method of execution  
20 is by lethal injection. He would be secured by leather  
21 straps. There are witnesses that are brought in. Witnesses  
22 that represent him, also witnesses for the victim.

23 The warden goes into the room. After  
24 he's secured, there's needles placed in his arm. He's then  
25 given an opportunity to make a last statement. Sometimes

1 these are read in the paper the next day, asking for  
2 forgiveness or expressing his innocence. But after that  
3 statement is made, the warden signals the executioner and  
4 poisons are injected into his body. It's poisons that act  
5 very quickly while he is conscious. His lungs will  
6 collapse. His lungs will force the air out. His heart will  
7 be stopped and he will pass out into a coma within about ten  
8 seconds.

9 And I don't detail that to be morbid, but I do  
10 want to lay our cards out on the table because it's one  
11 thing for us to talk about it philosophically, I believe in  
12 the death penalty, it's right for some cases. And it's  
13 another one when you get down here and you realize, I could  
14 be placed on the jury and asked to make a decision that's  
15 going to end someone's life some day. And I could be  
16 reading about that and I would be responsible for that.

17 And I just want every juror to realize  
18 that because it is our goal in this case that we feel we  
19 have the type and quality of evidence that will convince a  
20 jury to convict the defendant of this crime and to answer  
21 those questions in a way that he would be executed some day  
22 -- you probably know from reading in the papers that Texas  
23 leads the nation in executions. Some states have it and  
24 they never enforce it. You know in Texas that punishment  
25 will be ultimately carried out and if these questions are

1 answered the way we think they will, Mr. Murphy will be  
2 executed some day.

3           Some people can't sit on juries like this  
4 and make these decisions and other people just say, I can't  
5 do it for whatever reason and that's perfectly fine. We  
6 have no objection to that. You just have to be able to tell  
7 us that's the way you feel. If you can do it, that's fine,  
8 too.

9           But you talked a little bit -- I want to  
10 make sure about this. When you said, you know, I believe in  
11 the death penalty. I always have. I just don't know if I'm  
12 the one that could make that decision. And that's what I  
13 want to ask you about is to be as honest as you can with us,  
14 if you were placed on a jury like this, would you be able to  
15 take pen in hand and write in these answers, if the State  
16 proves it to you, knowing that when you do that, this man  
17 would be executed some day?

18           A.       I can answer the questions, yes.

19           Q.       And you feel you can take that responsibility  
20 and do that?

21           A.       Yes.

22           Q.       When you said earlier about some hesitation,  
23 what was going through your mind then?

24           A.       Well, it was just -- I mean, it is another  
25 person's life. Whatever he's done, he's done. But, I mean,

1 in answering the questions, I could do that.

2 Q. You feel you could?

3 A. Yeah, I believe I could.

4 Q. Let me get into another area. When we talk  
5 about capital murder we usually think about the triggerman,  
6 the person that actually causes the death. In any type of  
7 crime you don't always have just one person committing the  
8 crime. Sometimes you have groups of people that commit  
9 crimes.

10 The law says that if you all actively  
11 participate in carrying out a crime, you could all be  
12 responsible, even though one might have a greater role than  
13 another. Sometimes it takes more than one person to commit  
14 a crime. And the same is true with capital murder. You can  
15 have groups of people commit capital murder.

16 An example would be Mr. Wirskye and I,  
17 let's say we want to rob a bank. We go in there. I have  
18 the guns, but Mr. Wirskye, he's not armed. He knows I have  
19 guns. He's got a bag. We have another man that's outside  
20 as our getaway driver. We're all planning this out  
21 together. He waits outside and has the car running. He's  
22 going to shout at us if the police come.

23 I go in and I pull guns and I threaten  
24 everyone and Mr. Wirskye starts gathering up the money.  
25 Something goes wrong. Maybe one of the tellers does

1 something I don't like. Maybe one goes for an alarm.  
2 Mr. Wirskye says that one is trying to get away. Anyway, I  
3 shoot them. He didn't do it, the driver doesn't do it, I  
4 shoot them. We all run out. We're captured soon after  
5 that.

6 Obviously, I can be prosecuted for  
7 capital murder. I can receive the death penalty because I'm  
8 the triggerman. The law says that the other men involved,  
9 Mr. Wirskye and the driver, can, also, be prosecuted for  
10 capital murder and could even, depending on the facts, be  
11 sentenced to death because they are just as responsible  
12 under the law, if they are actively participating in this  
13 crime.

14 Some people disagree with that part of  
15 the law when it comes to the death penalty. If it were up  
16 to them, they would draw the line for someone deserving the  
17 death penalty, as just -- they reserve it just for the  
18 triggerman, the person who causes the death. They might  
19 have another very severe punishment, life sentence, 99  
20 years, for the persons that helped them, the accomplices,  
21 but they would not reserve the death penalty for them.  
22 Other people feel the other way. They think those people  
23 should ultimately be given the death penalty.

24 How do you feel about that law as far as  
25 the accomplices go? I know you are fine with the

1 triggerman, but in situations where there are other people  
2 that help, how do you feel about that?

3 A. Um, well, I mean, is it just specifically you  
4 were the only one with the gun?

5 Q. I'm sorry, what?

6 A. Are you saying that -- I mean, I guess, in  
7 other words, say from the news we know that you are the only  
8 one that had the gun. Are you asking me -- I mean, are you  
9 asking me just because you have the gun, you shot, are the  
10 other ones as equally as guilty?

11 Q. Yes. What I'm asking, do you have a problem  
12 with the accomplices who don't have the gun being prosecuted  
13 for capital murder --

14 A. Oh, no.

15 Q. -- and the death penalty?

16 A. No.

17 Q. Even if they didn't do any shooting?

18 A. No.

19 Q. You think that's fair?

20 A. I do.

21 Q. Why is that? Why do you --

22 A. Well, I mean, you go in with the idea of  
23 robbing the bank. Whatever end results, whether it was  
24 planned or just you got nervous or whatever, he informed you  
25 that person was reaching for the alarm, so what's the

1 difference? He's signaling you for whatever action you  
2 took.

3 Q. So you feel he's just as responsible?

4 A. Uh-huh, yes.

5 Q. That's what the law envisions. But I want to  
6 make sure you are on board with that, because it is our  
7 theory and we will prosecute this case under what we call  
8 the law of parties. We will prosecute Mr. Murphy as an  
9 accomplice in that he's not the triggerman, but a party and  
10 accomplice to the offense. You have no problem with that?

11 A. No.

12 Q. Okay. The way the law says is we can prove it  
13 in two ways, either you are actively participating,  
14 encouraging, aiding the offense to occur, and we'll  
15 probably, usually you prove both methods, but you only have  
16 to prove one. Or the law also says if we enter into a  
17 conspiracy, say Mr. Wirskye and I -- and a conspiracy is  
18 merely just an agreement. We decide we want to rob the  
19 bank. And if we're committing that, robbing the bank, and  
20 one of us commits another offense, and in this case murder,  
21 and in order to further that robbery, then we are all held  
22 responsible, if we should have anticipated that something  
23 like that should happen.

24 And I think that you kind of explained  
25 that when you said, hey, you knew that guy had a gun.

1 A. Uh-huh.

2 Q. You know, you warned them that someone was  
3 going for an alarm, so you should have known what was going  
4 to happen. You can use that loaded weapon and kill someone.

5 A. Uh-huh.

6 Q. Just a common sense principle.

7 A. Uh-huh.

8 Q. Maybe the theory would be different, if you  
9 didn't know he had a gun. And the example that I gave,  
10 everyone knew he was armed and that sort of thing. And then  
11 that's how we have to go about proving this case and you  
12 have no problem with that? You agree with the law?

13 A. No.

14 Q. Let's talk a little bit about these Special  
15 Issues. I want to go over them kind of one at a time. So  
16 if you would take a moment to read Special Issue No. 1 to  
17 yourself.

18 A. [Prospective juror complies.]

19 Q. Okay. Question No. 1, it asks kind of for you  
20 to make a prediction. Starts out with a no answer under the  
21 law and we have to prove from the facts of the crime itself  
22 and any other evidence that you hear, that it should be  
23 answered yes.

24 Now, you don't get to this question until  
25 you have found the defendant guilty of capital murder. And



1 it asks whether there's a probability that the defendant  
2 would commit criminal acts of violence that would constitute  
3 a continuing threat. You see how that question is asking  
4 you to make a prediction about how they are going to act in  
5 the future?

6 Let me ask you, first, do you feel you  
7 could answer that question if you are given sufficient  
8 facts?

9 A. Yes.

10 Q. Okay. What would be important to you in  
11 answering that question?

12 A. Well, um, I guess it's previous -- not  
13 previous, but if you had been in trouble before, I guess.

14 Q. Okay.

15 A. If we get to find that out or, um, I guess  
16 just his behavior.

17 Q. Okay. If he has a criminal record and been in  
18 trouble before, that type of evidence is admissible in that  
19 stage of the trial. It can go into that consideration and,  
20 obviously, the crime itself, committing the murder, is  
21 something that you can consider.

22 Do you feel that you could get enough  
23 information from the facts of the crime itself to enable you  
24 to answer that question yes? Their role in the crime, how  
25 it happened?

1 A. I believe so.

2 Q. Okay. Now, let me ask you this because people  
3 feel differently and I want to get your honest opinion on  
4 this when you get to this question. You would have just  
5 found the defendant guilty of capital murder, that is, you  
6 believe he committed beyond a reasonable doubt. Some people  
7 tell us, if I have reached that decision where he is guilty  
8 of capital murder beyond a reasonable doubt and this is the  
9 future danger question, they are going to be a danger. That  
10 tells me enough at that point in time that he's going to be  
11 dangerous. He's committed capital murder. Other people  
12 tell us, no, that doesn't answer the question. And, as I  
13 said, people feel differently about that.

14 How do you feel about that situation  
15 based on that question No. 1, the future danger question,  
16 once you found him guilty of capital murder?

17 A. What is the question? I'm sorry.

18 Q. Do you feel that that finding alone, he's  
19 guilty of capital murder beyond a reasonable doubt, do you  
20 think that answers yes to No. 1 for you that he is a  
21 continuing danger to society?

22 A. Yeah, I think so.

23 Q. And why is that?

24 A. Well, I mean, if he killed for whatever  
25 reason, robbing a place, I guess, I mean, what makes us not

1 believe that if he gets a chance again that it wouldn't go  
2 the same way?

3 Q. Okay. Let me ask you how you feel about some  
4 of the language in question No. 1. We have to prove that  
5 there's a probability that the defendant would commit  
6 criminal acts of violence in the future. What does  
7 "probability" mean to you in that sense?

8 A. Just a possibility, the slightest chance.

9 Q. Slightest chance, okay. How about "criminal  
10 acts of violence"? What does that mean to you?

11 A. That would be a robbery, a threat towards  
12 family -- anybody, I guess, kids and adults.

13 Q. A threat to another human? And how about  
14 "society"? What does that mean to you?

15 A. Just means me, my community.

16 Q. Okay. Question No. 2, will you take a moment  
17 to read that to yourself? That one is a little bit longer  
18 and is a little more complicated.

19 MR. SHOOK: Judge, may we approach?

20 THE COURT: You may.

21 (Bench conference)

22 THE COURT: Ms. Portillo, the parties  
23 have agreed we're not going to have you on this jury, but I  
24 want to thank you for your time and your service to this  
25 Court and this county and how much more you have learned

1 going through this process. But this is not the case that  
2 you will be seated on.

3 So you got in early and you saved about an  
4 hour and a half and you are out the door before 9:00. Not  
5 too bad. We appreciate your time and you are free to go.  
6 Thank you.

7 [Prospective juror out]

8 THE COURT: Has Sullivan arrived?

9 [Prospective juror in]

10 THE COURT: Good morning.

11 PROSPECTIVE JUROR: Good morning.

12 THE COURT: How are you?

13 PROSPECTIVE JUROR: I'm fine.

14 THE COURT: And your name is Mary  
15 Elizabeth Sullivan?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Good morning. I want to  
18 thank you for being here. I see you brought your reading  
19 material. We didn't have you wait too long. Did you have  
20 an opportunity to review the guide that I provided for you?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: And the witness list?

23 PROSPECTIVE JUROR: Um, no, sir.

24 THE COURT: Didn't get a witness list?

25 PROSPECTIVE JUROR: There was one in

1 there, but they just told us this. They didn't say anything  
2 about the witness list.

3 THE COURT: All right. My job today is  
4 to be sure that you understand the law, as you have read,  
5 hopefully, a couple of times. The law can be somewhat  
6 complicated and can be overwhelming. So our job here is to  
7 be sure that you understand the law and the attorneys will  
8 ask you questions about that. If you don't understand the  
9 question or if you do not understand how the law works, just  
10 please tell us.

11 PROSPECTIVE JUROR: Okay.

12 THE COURT: The question that I have for  
13 you is this trial shall begin on November 10th. Will you be  
14 able to give the Court two weeks of your time?

15 PROSPECTIVE JUROR: Um, it would be hard  
16 because of my job.

17 THE COURT: I read that Medicare,  
18 Medicaid billing.

19 PROSPECTIVE JUROR: For a nursing home.

20 THE COURT: And it would be an imposition  
21 on your job, but they will just have to deal with that.

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: I mean, we can't give  
24 business reasons, trust me. If, as I said to the general  
25 panel, if I let everybody off that had a business excuse, we

1 wouldn't be able to have any jurors down here. So I  
2 understand it may be a hardship for your employer, but  
3 that's just the way it goes. Sometimes they will have to  
4 understand.

5 PROSPECTIVE JUROR: Okay.

6 THE COURT: So with that, Mr. Wirskye,  
7 you may inquire.

8 MARY SULLIVAN,  
9 having been duly sworn, was examined and testified as  
10 follows:

11 DIRECT EXAMINATION

12 BY MR. WIRSKYE:

13 Q. How are you this morning, ma'am?

14 A. I'm fine.

15 Q. My name is Bill Wirskye and I'll be the  
16 assistant DA that's going to visit with you a little bit  
17 this morning, talk a little bit about some of the  
18 information in your questionnaire.

19 A. Okay.

20 Q. Talk a little bit about how you feel, your  
21 thoughts and feelings on the death penalty, and then talk to  
22 you maybe about some of the law that may apply here, if you  
23 are selected as juror in this case.

24 I know you told the Judge it would be a  
25 hardship for your work?

1 A. Yes.

2 Q. Would you kind of tell us a little more  
3 detail?

4 A. I do the billing for six nursing homes that we  
5 own. I'm the only one right now that can do the Medicare  
6 billing, so it would be a delay in funds for our nursing  
7 homes.

8 Q. Okay. Would it interrupt the cash flow, is  
9 what you put in the questionnaire maybe?

10 A. Yes.

11 Q. Would that be a major disruption for your -- I  
12 guess what I'm --

13 A. It would if we could -- I mean, there would  
14 have to be a way that we would have to plan ahead to do it.

15 Q. Do you think that given enough notice you  
16 could make some arrangements?

17 A. Probably, yes.

18 Q. Okay. How long -- what company is that that  
19 you work with?

20 A. It's called Paramount Healthcare. I work at  
21 the corporate office.

22 Q. How long have you worked there?

23 A. For -- since 1996.

24 Q. Okay. Before we get into all the serious  
25 stuff, you said that your favorite show is "Trading Spaces"?

1 A. Yes. I'm not, you know, just --

2 Q. That's what my wife and I do every weekend is  
3 "Trading Spaces" or "While You Were Out". So who is your  
4 favorite designer?

5 A. Vern.

6 Q. Okay. Do you like Genevieve?

7 A. Not really.

8 Q. Me neither, not a big fan of hers. One thing  
9 that we ask in the questionnaire and it's a little unfair we  
10 talk about it, you filled it out in May and you have not  
11 seen it and we all have copies of it, but when you are  
12 talking about asking -- I guess, the first thing that popped  
13 into your mind about prosecutors you said "Well, normally  
14 stay within the law to convict". And I was just wondering  
15 what that means or coming from TV or --

16 A. It is really because watching -- they have had  
17 shows recently where they show one of the like the "Law and  
18 Order" shows and sometimes you just wonder what they're  
19 thinking when they're doing things and --

20 Q. Not having been a prosecutor for a while the  
21 things that they do on "Law and Order" surprise me.

22 A. They have the real one, "Criminal Intent"  
23 where they have actual cases.

24 Q. What do you think about that series? I  
25 watched it a little bit.



1 A. Um, sometimes I didn't think they did enough  
2 research on their job or asked enough questions or sometimes  
3 I thought they had evidence staring them in the face that  
4 they didn't use. But that might be because it's a TV show  
5 and we didn't see everything.

6 Q. The way it's edited?

7 A. Uh-huh.

8 Q. Okay. If you are selected to serve as juror  
9 in this case, are you going to have that in the back of your  
10 mind as you watch us try our case?

11 A. I would hope not. We're not supposed to do  
12 that. So I would hope that I could come with the right  
13 frame of mind for what it is.

14 Q. Uh-huh.

15 A. But I do, to be honest, I do tend to be  
16 conservative, so that's going to play a part, I'm sure.

17 Q. A lot of times we ask jurors to come down here  
18 and not think or not consider about things they know to be  
19 facts. And in a sense that's a little bit unfair. But let  
20 me ask you this. You, like almost everybody we talked to,  
21 has mentioned that they have heard some of the publicity  
22 about this case.

23 A. Yes.

24 Q. Can you tell us what you have heard or what  
25 you remember about this case?

1           A.       Um, I would say about the defendant, nothing  
2 personal. I know absolutely nothing about this person. I  
3 don't know even what he was in jail for previously when he  
4 escaped. Just -- I haven't read up on it or anything to  
5 that extent. What I've heard has been on the radio or on  
6 the TV news.

7           Q.       Okay. Do you remember any details you may  
8 have heard?

9           A.       Um, to be honest, just what the account of  
10 what the crime was and what, you know, what happened and I  
11 don't even know that that's fact, to be honest. I mean,  
12 just about the shooting that, you know, they rolled over the  
13 police officer, supposedly. I don't know that to be fact,  
14 though. That's just how it was reported.

15          Q.       Knowing those details or having heard that,  
16 how do you think it may affect you if you actually get over  
17 in the jury box and become one of the jurors in this case?

18          A.       I think that, unfortunately, knowing that if  
19 it was true that it would really bother me in the sense that  
20 it just couldn't be a robbery, that they had to roll over  
21 the policeman with the car. That would bother me. I mean,  
22 that display, I guess, a part is on my mind right now.

23          Q.       Okay. And we talk to a lot of people and  
24 people have heard differing information and formed different  
25 opinions one way or another about this case. And you know

1 yourself more than anyone what is in your heart of hearts.

2 You know, do you think it might affect your ability to  
3 listen to the case or kind of --

4 A. No. I think that I could be openminded. I  
5 mean, I don't -- don't -- it's not that I can't be swayed  
6 one way or the other. I would like to be able to think that  
7 I could hear facts and make a determination that way.

8 Q. Okay. I know -- I guess we all like to think  
9 that, but --

10 A. Right.

11 Q. I guess what both sides are worried about,  
12 what we have already spoken about, you have heard something  
13 about this case and you are watching the trial and all, you  
14 don't hear about it and why isn't the prosecutor doing this  
15 or --

16 A. Right.

17 Q. You have the same thing with the defense  
18 lawyers. I mean --

19 A. That wasn't favorable at all, I know.

20 Q. Yeah. But like I said, I know sometimes it's  
21 unnatural to ask people to do that. I just want to make  
22 sure that you would be able to complete -- able to  
23 completely clear your mind and just focus on what you hear  
24 in the courtroom?

25 A. I don't honestly know that I could completely

1 put it out of my mind, no.

2 Q. So you think maybe what you heard, read, seen,  
3 may possibly affect your verdict, something outside the  
4 courtroom? And that's okay if it does. Like I said, we  
5 talk to a lot of people. We just really need to know in  
6 your heart of hearts --

7 A. I think with what -- I think my mind focuses  
8 more on the other -- the other verdicts of the other  
9 defendants, knowing that they have all been tried and  
10 convicted and all have gotten the same penalty. I think  
11 that would play more on my mind than the brutality of the  
12 crime, to be honest.

13 Q. Okay.

14 THE COURT: Ms. Sullivan, the parties  
15 appreciate your honesty and you may have made a comment that  
16 maybe I shouldn't have said that, but that's exactly what  
17 they need to hear. You are being honest. It may cause a  
18 problem and you want to be fair and a lot of people aren't  
19 as honest with themselves as you are. This case is just not  
20 the right one for you. The parties have agreed to excuse  
21 you.

22 Thank you for coming down and now you  
23 don't have to worry about your billing problems, but you can  
24 tell your employer, the Judge would have made me do it  
25 anyway. But you don't have to serve on this case, so you

1 are free to go.

2 PROSPECTIVE JUROR: Thank you.

3 [Prospective juror out]

4 THE COURT: Ms. Garber.

5 [Prospective juror in]

6 THE COURT: Good morning. How are you?

7 PROSPECTIVE JUROR: Good. How are you?

8 THE COURT: Your name is Jamie R. Garber?

9 PROSPECTIVE JUROR: Garber.

10 THE COURT: Ms. Garber, thank you for  
11 being here this morning. Have you had enough time to review  
12 the guide we provided for you?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: And did you look at the  
15 witness list?

16 PROSPECTIVE JUROR: Yes. I glanced over  
17 that.

18 THE COURT: That's a lot of law to put on  
19 someone at 8:30 in the morning.

20 PROSPECTIVE JUROR: It's all right.

21 THE COURT: And we don't expect you to be  
22 able to memorize that. The objective of the Court is for  
23 you to be able to understand the law. Once you understand  
24 the law, can you follow the law? That's the main -- my main  
25 purpose here. If you don't understand the questions or

1 concept that's being discussed by the attorneys, just say,  
2 would you rephrase that or I don't understand. You know,  
3 this is the only time that you really get to interact with  
4 the lawyers and the Court.

5 PROSPECTIVE JUROR: Okay.

6 THE COURT: Sometimes looks like you are  
7 the one on trial. We're certainly not trying to intimidate  
8 you by any means. It's just the only way that we can really  
9 have an opportunity to visit with you.

10 The question I have for you is, I've  
11 given you the trial date of November 10th. I need you for  
12 two weeks. Would you have any problem serving the Court  
13 with that time period?

14 PROSPECTIVE JUROR: No, sir.

15 THE COURT: Mr. Shook?

16 JAMIE GARBER,  
17 having been duly sworn, was examined and testified as  
18 follows:

19 DIRECT EXAMINATION

20 BY MR. SHOOK:

21 Q. Ms. Garber, my name is Toby Shook. I'll be  
22 asking you questions on behalf of the State this morning.  
23 You have been down on jury duty before?

24 A. Yes.

25 Q. I was just looking at your questionnaire and I

1 couldn't tell if you actually served on a jury.

2 A. I was on one in Coppell.

3 Q. Okay. One of the city courts?

4 A. Yes, yes.

5 Q. Did it have something to do with parks, park  
6 rules?

7 A. Yes.

8 Q. Normally juror selection, you probably know  
9 this -- how many times have you been called down?

10 A. Three.

11 Q. Okay. So we get you a lot, I guess. Normally  
12 we talk to the jurors in a big panel and then maybe have a  
13 few individual questions. But because it's a capital murder  
14 case where we're seeking the death penalty, the law requires  
15 us to do it individually. It's kind of a job interview  
16 situation almost. But you look pretty comfortable up there.  
17 The rules are, if you have any questions you want to ask of  
18 us, feel free to at any time. All we want to know are your  
19 honest opinions on these things. Okay?

20 A. Okay.

21 Q. We can't go into the specific facts of this  
22 case. But, obviously, we may go into hypotheticals, ask you  
23 how you feel about other cases, that sort of thing. I'm  
24 going to talk about some of the information given us in the  
25 questionnaire and, also, how you feel about capital murder,

1 the laws that might apply. All right?

2 A. Okay.

3 Q. I see from your questionnaire you work at the  
4 -- How do I pronounce that?

5 A. It's the Insco Dico Group.

6 Q. I kept looking at dico and thinking disco.

7 A. Most people do.

8 Q. What do you do with them?

9 A. We are a security bond company.

10 Q. Okay. And you have been with them how long?

11 A. A year.

12 Q. All right.

13 A. As of July 29th.

14 Q. Have you been in that type of business for  
15 some time?

16 A. Yes. About, um, six years, I believe, six or  
17 seven years. I was in commercial insurance before that.

18 Q. Okay. I also saw that you -- and this  
19 questionnaire covers a little bit of everything. Believe it  
20 or not, it is quite helpful to us. Some of the questions  
21 might sound ridiculous, but your favorite radio station is  
22 1310, "The Ticket"?

23 A. Yes.

24 Q. What show do you like the best?

25 A. I like "The Musers" and "The Hardline" in the



1 afternoon.

2 Q. I enjoy that, too.

3 Q. The jury you sat on in Coppell, that was just  
4 someone violating the park rules?

5 A. Yes.

6 Q. Like a --

7 A. They were playing on the field without  
8 authorization.

9 Q. Was that -- that case didn't take you a real  
10 long time?

11 A. No.

12 Q. Let me ask you, then, a few questions from the  
13 questionnaire. We asked a whole lot of questions about the  
14 capital murder, obviously, and specifically this case and  
15 what you have heard about it and how, generally, you feel  
16 about a capital murder. You know that the State is seeking  
17 the death penalty, so we, obviously, want to talk to you  
18 about how you feel about the death penalty.

19 You put in your questionnaire that you  
20 favor it as a law and what I want you to do is kind of in  
21 your own words tell us why you favor it as a law or the  
22 objective that you feel the death penalty has as a  
23 punishment?

24 A. Well, I believe that depending on what type of  
25 crime was committed, that the death penalty should be asked

1 for. I'm a little nervous up here, so please forgive me. I  
2 have not been -- considering this crime and what happened, I  
3 believe that the death penalty should be given.

4 Q. Okay. When you say "this crime" you mean --

5 A. The one that you're -- I'm here for.

6 Q. We ask because this is a high publicity crime  
7 in which people followed it a lot when it first occurred and  
8 you are no exception. You, obviously, followed it in the  
9 news, the newspapers. The law is this, just because you  
10 have seen something or read something, doesn't necessarily  
11 disqualify you as a juror. However, some jurors have seen  
12 more than others and followed the cases more closely than  
13 others.

14 What do you recall about the case when  
15 you followed it?

16 A. That it happened at Oshman's. Just describe  
17 what I have read about it?

18 Q. Just what you remember.

19 A. That apparently the people were in Oshman's,  
20 acting kind of strangely, and they were there to rob the  
21 place. And apparently -- I can't remember if they took guns  
22 from Oshman's or if they already had them with them, but, of  
23 course, they were -- the intent was to get away with goods  
24 and by whatever means possible to try to escape, if they  
25 were caught.

1 And the police officer showed up and I  
2 don't know if he was in the back of the building or in the  
3 front of the building when all this happened, but he was  
4 shot. And I don't know if this is correct, but he was run  
5 over, also.

6 Q. Did you follow the crime after it occurred,  
7 involving the capture and that sort of thing?

8 A. Yeah. Apparently, they were caught in  
9 Colorado in a trailer park area.

10 Q. Okay. How about any subsequent court  
11 proceedings with any of the individuals? Did you follow any  
12 --

13 A. Not too closely, no, I did not.

14 Q. Here's what the law is. Obviously, we can't  
15 ask you to forget everything you have heard. That would be  
16 impossible and defies common sense. The law recognizes that  
17 it's one thing to read things in newspapers and it's another  
18 thing sitting on a jury and deciding these facts.

19 A. Right.

20 Q. Obviously, the jury has to decide and base  
21 their decisions just on what they hear in the courtroom and  
22 not on what they have seen on TV or newspapers because your  
23 better information is, common sense, it's going to come from  
24 the actual witnesses.

25 A. Right.

1 Q. Because the newspapers and TVs often get  
2 things wrong. In fact, they always get things wrong.  
3 That's why we try cases here in the courtroom with  
4 witnesses.

5 What the Judge instructs the jurors is  
6 you have to decide this case based on what you hear in the  
7 courtroom from the witnesses and cannot let what you have  
8 read or heard influence you in your decisions. And some  
9 people can do that, you know, they recognize that this  
10 information isn't the best. Maybe they didn't follow it  
11 closely and they cannot forget about it, but they would make  
12 their decision and require the State to prove their case  
13 just based on the witnesses.

14 And we just want your honest answer on  
15 that. You have read a lot. You followed the cases pretty  
16 closely, at least when it happened. Would you be able to  
17 follow that particular part of the law or from what you have  
18 already read and heard, would that, you think, influence you  
19 in your decision?

20 A. I think I would try my best. But just -- I  
21 don't know. I get emotional because of what happened. I  
22 would try to do that (juror crying).

23 Q. And I appreciate your honesty because,  
24 obviously, it got a lot of attention. And you, like a lot  
25 of people, were real interested in the crime. And that's

1 all I want is your honest opinion. Some people can follow  
2 that instruction and that's fine. And other people tell us  
3 I'm a little too close to this case and it's going to  
4 influence me from -- I've already formed an opinion as to  
5 guilt and punishment and that might stay there.

6 Other people tell us, no, I mean, I  
7 remember seeing a brutal crime, but I'm going to wait and  
8 make my decision on what I see in the courtroom. But  
9 there's no right or wrong answers. I just want your honest  
10 opinion. I know the defense wants to know this just as much  
11 as I do. And the Court, obviously, makes this decision.

12 A. Well, I would do my best to go away from what  
13 I've read. But with any crime that's like this for murder,  
14 it's kind of hard to, I would think.

15 Q. Do you think even if you tried your best,  
16 there might be --

17 A. I don't know. I can't -- I don't know. I  
18 think I would. I think I would try to keep from reading,  
19 you know, keep from what I read in the newspapers and just  
20 base my opinion on what the defense and the prosecutors have  
21 told me.

22 MR. SHOOK: Judge, can I approach just  
23 one moment?

24 THE COURT: You may.

25 (Bench conference)

1 Q. (By Mr. Shook) I take it, then, from your  
2 last answer, as best you know yourself, you believe that you  
3 can do that and make the decision just on what you hear in  
4 the courtroom?

5 A. Yes, sir.

6 Q. Okay. Fair enough. Let me -- you, obviously,  
7 believe in the death penalty and you put in your  
8 questionnaire that, you know, it just kind of depends on the  
9 facts of the case. In Texas the death penalty is reserved  
10 just for certain types of murder cases. We have some brutal  
11 murder cases that actually could never get the death  
12 penalty, but a lot of people wish we could.

13 But you have to go by certain guidelines.  
14 We have a life sentence. If I pull a gun out now and shoot  
15 Mr. Wirsky in the heart, I couldn't get the death penalty.  
16 Capital murder is an intentional murder that occurs with  
17 other aggravating factors, during the course of a felony,  
18 murder someone during a robbery, kidnapping, rape, during a  
19 burglary, that could be a death penalty case. Murder of a  
20 police officer, prison guard, or fireman while on duty, that  
21 could be a death penalty case, or child under the age of  
22 six, or multiple victims.

23 But those are the type of cases that are  
24 reserved for the death penalty. And I take it from the  
25 answers that you have in your questionnaire that you agree,

1 depending on the facts of the case, that those are the types  
2 of cases that you feel could be appropriate for the death  
3 penalty under the proper circumstances?

4 A. Yes.

5 Q. Okay. A capital murder trial is divided into  
6 two parts like all criminal trials. We have the  
7 guilt/innocence stage where we have to prove the guilt. And  
8 if we fail to do that, it's a not guilty finding and  
9 everyone goes home. If we meet our burden of proof and  
10 prove the defendant guilty, we then move to the punishment  
11 phase.

12 At the close of the punishment phase, the  
13 jury gets these questions. We'll go over those in more  
14 detail in a minute. But, basically, it asks is the  
15 defendant a continuing danger to society? Did he cause the  
16 death or if he didn't cause the death, did he anticipate a  
17 death would be taken and is there any mitigating evidence  
18 where you think a life sentence should be imposed, rather  
19 than a death sentence?

20 If the questions are answered yes, yes,  
21 and no, the defendant would be sentenced to death. If they  
22 are answered any other way, it's a life sentence. But those  
23 are the only two alternatives once you found him guilty. It  
24 will be a death sentence or life sentence. It all depends  
25 on how the questions are answered. We'll go over those in

1 more detail.

2 A. Okay.

3 Q. Going a little further, when we talk about  
4 capital murder we usually envision circumstances of a  
5 person, the triggerman, causing this. Now, in any type of  
6 crime you sometimes have more than one person committing the  
7 crime, groups of people who commit crimes. And the law says  
8 that if we actively participate, encourage, help commit a  
9 crime, we are all held responsible, even though someone may  
10 have a greater role.

11 The same is true of capital murder. The  
12 example I want to give you is Mr. Wirskye and I, let's say  
13 we want to rob a bank. Our plan is we'll go there. I have  
14 the gun. He knows that, but he's going to be the bag man.  
15 I hold the gun on everyone. He gathers up all the money.

16 At some point in time, maybe I start  
17 shooting the teller because I don't like him or Mr. Wirskye  
18 warns me they are going for an alarm or something and I  
19 shoot. We leave and we're caught. Obviously, I could be  
20 charged with a capital murder and could be prosecuted for  
21 the death penalty because I'm the triggerman.

22 Under our law Mr. Wirskye can, too,  
23 depending on the facts, because he actively participated in  
24 the crime. He was my accomplice. There's a couple of  
25 theories how that works, but the bottom line is this. He



1 could be prosecuted for capital murder, and depending on the  
2 facts, he could get the death penalty, even though he's the  
3 nontriggerman. Okay?

4 People feel differently about that law.  
5 Some people, if it were up to them, they have no problem  
6 with the death penalty for the triggerman. The accomplice  
7 that assisted in committing the offense, though, they have  
8 reservations about. But if it were up to them, they would  
9 have a different punishment, maybe just a long prison term  
10 for that person. Other people agree with the law and tell  
11 us, I agree with the law. Accomplices that are helping  
12 commit the capital murder should be held responsible, too,  
13 and ultimately could get the death penalty, depending on the  
14 facts, even if they are not the actual triggerman. It all  
15 comes down to the facts. But they agree with the law in  
16 that regard that the accomplices should be held responsible.

17 People differ on that. And I want to ask you  
18 how you feel about an accomplice being prosecuted for  
19 capital murder and ultimately receiving the death penalty.  
20 Do you feel that's fair, depending on the facts of the  
21 particular case?

22 A. On a capital murder trial?

23 Q. Yes.

24 A. Yes.

25 Q. Okay. Do you feel it's fair that an

1 accomplice could actually get the death penalty, even though  
2 they didn't actually pull the trigger, depending on the  
3 facts?

4 A. That they could actually get the death  
5 penalty?

6 Q. Yes, ma'am.

7 A. Yes.

8 Q. Why is that?

9 A. Because they were there. They were an  
10 accomplice to whatever is happening. They knew what was  
11 going to go on.

12 Q. Okay. So it depends on their role?

13 A. Depending on their role.

14 Q. And if they knew what was going on?

15 A. (Prospective juror nods head.)

16 Q. Okay. Now, I want to talk about these Special  
17 Issues for a moment because you only get these in a death  
18 penalty case. You don't get to these Special Issues until  
19 or unless the defendant is found guilty. Once he's been  
20 found guilty, you can hear additional evidence, background  
21 evidence, good and bad, about a person's background,  
22 evidence, good and bad, about a person.

23 Go back into deliberations and you  
24 consider what you heard in the guilt/innocence stage and,  
25 also, any new background information, good and bad, you

1 heard about the individual and you answer these questions  
2 separately as a juror.

3 Now, as you know from growing up here,  
4 that everyone starts out with that presumption of innocence.  
5 The State has to prove a case beyond a reasonable doubt.  
6 And in the punishment stage on these first two questions,  
7 those start out with no answers and we have to prove the  
8 evidence beyond a reasonable doubt that they should be  
9 answered yes. The burden of proof stays on us on the first  
10 question. We use the evidence of the crime itself.

11 So you go back and you have already made  
12 a decision on guilt/innocence, but you kind of look at that  
13 evidence again from a different angle and decide, okay, how  
14 that applies to question No. 1, has the State proven its  
15 case to me that he's a continuing danger and any new  
16 background information you have learned about him.

17 The question asks whether there's a  
18 probability that the defendant would commit criminal acts of  
19 violence that would constitute a continuing threat to  
20 society? It's asking the jurors to make a decision, do you  
21 think he's going to be a dangerous person and commit  
22 criminal acts of violence in the future? So it's asking you  
23 to make kind of a prediction of how they will behave in the  
24 future.

25 Do you feel comfortable in making that

1 decision, if you are given enough evidence?

2 A. Yes, sir.

3 Q. Okay. Now, the evidence you can use is his  
4 role in the crime, what you found in the guilt/innocence  
5 stage, as well as if he's had a prior criminal record or  
6 lack of criminal record, you have seen a pattern before,  
7 that sort of thing. You can even hear from those witnesses  
8 on the previous crime, if they exist, or you can hear good  
9 character evidence. Maybe it's the first time he's ever  
10 done something.

11 We can't preview the facts for you. I  
12 could give you a whole bunch of scary facts or I could give  
13 you a whole bunch of facts that show the person is not  
14 dangerous. The point is this. As a juror you have to wait  
15 until all the evidence is in so you have all the information  
16 before you make that decision. Just because you found  
17 someone guilty of capital murder, proven beyond a reasonable  
18 doubt, you don't go and answer yes right away. It's no  
19 automatic answers. If they were automatic answers based on  
20 your guilty verdict, there wouldn't be any reason even to go  
21 through this process.

22 The law instructs the jurors and believes  
23 that the jurors should wait, listen to all the evidence, and  
24 then go back and deliberate and then make their decision  
25 based on the evidence. If you think beyond a reasonable

1 doubt that he is a continuing danger, you would answer the  
2 question that way. If you don't think the State has proven  
3 it, even though he's guilty of capital murder, you would  
4 answer it no, leave it as a no. And that's fine. You just  
5 have to call it the way you see it based on the evidence.

6 In other words, there's no automatic  
7 answers. Just because you found him guilty, you don't go  
8 check the yes off. It's just going to depend on the facts  
9 of that particular case. Do you feel that you can follow  
10 that portion of the law?

11 A. Yes, sir.

12 Q. And could you wait and require the State to  
13 prove to you beyond a reasonable doubt that it should be  
14 answered yes?

15 A. Yes.

16 Q. And could you -- would you not automatically  
17 answer yes just because you found him guilty? In other  
18 words, you would wait and listen to all the additional  
19 evidence in the punishment stage, then deliberate and then  
20 make your decision?

21 A. Yes.

22 Q. Okay. So there wouldn't be an automatic yes?

23 A. I would wait.

24 Q. You would wait until you heard everything?

25 A. Yes.

1 Q. That's a common sense dealing in your line of  
2 work with bonds and all that. You want to get all the  
3 information that you can before you make the decisions that  
4 you make?

5 A. Correct.

6 Q. Or if you buy a house, you want to get all the  
7 information before you make that type of decision. The same  
8 thing here. You can't have a knee-jerk reaction and answer  
9 these questions.

10 Question No. 2, that question asks  
11 whether the defendant actually caused the death of the  
12 deceased or did not actually cause the death of the  
13 deceased, but intended to kill the deceased or another or  
14 anticipated that a human life would be taken.

15 Now, it's complicated. We didn't write  
16 these questions. I want to let you know that. Someone down  
17 in the Legislature did that years ago, so they are not  
18 always that clear.

19 But the first part is pretty simple. If  
20 you believe from the evidence that he actually caused the  
21 death, that question could be answered yes. But the second  
22 part of the question has to do with the accomplice  
23 situation. If he didn't actually cause the death of the  
24 deceased, but his intention, he intended to kill the  
25 deceased or another person or he anticipated that a human

1 life would be taken, then you can answer it yes. And that's  
2 just based on the evidence.

3 If it's an accomplice situation and he  
4 didn't actually cause the death, but you feel from the role  
5 and how the crime occurred that he anticipated something  
6 like that would happen. In my situation Mr. Wirskye knew I  
7 had a gun and maybe he knew I was dangerous and that sort of  
8 thing. Then you could make the decision that way. So that  
9 encompasses the accomplice decision, but it's based simply  
10 on the person's role in the offense and anything that you  
11 have learned about him in the past, you know, in the  
12 punishment stage, that might help you know about their  
13 personality and what they are capable of.

14 Again, it starts out with a no answer and  
15 we have to prove to you it should be answered yes, just  
16 depending on the facts of the case. Do you feel that you  
17 could do that?

18 A. Yes, sir.

19 Q. Okay. Just because you found him guilty or  
20 just because you have already answered question No. 1 yes,  
21 you don't automatically answer question No. 2 yes. It's an  
22 independent decision based on all the information. And you  
23 could follow the law?

24 This last Special Issue is the mitigation  
25 question and neither side has the burden of proof. We don't

1 have to prove it should be answered no and the defense  
2 doesn't have to prove it has to be answered yes. We will,  
3 obviously, argue that way, I'm sure, but there's no burden  
4 of proof like there is on the first two on us.

5 It asks whether taking into consideration  
6 all the evidence, including the circumstances of the  
7 offense, the defendant's character and background, and the  
8 personal moral culpability of the defendant, there is a  
9 sufficient mitigating circumstance or circumstances to  
10 warrant that a sentence of life imprisonment, rather than a  
11 death sentence, be imposed.

12 Now, the question gets kind of long, but,  
13 basically, it's saying is there anything in the case, maybe  
14 their role in the crime, something -- how they grew up,  
15 something in their background, if there's something that  
16 tells you in your heart that they should get a life  
17 sentence, rather than a death sentence, you can answer the  
18 question that way, if there's sufficient mitigating  
19 evidence. If there is not, you can leave it as no.

20 It allows the jurors to kind of look at  
21 everything and do what they think is right in the case. In  
22 other words, not every death penalty case where someone is  
23 found guilty is going to result in a death. You may find  
24 there is mitigating evidence in that particular case.

25 What mitigating evidence is, I can't tell



1 you. And the Judge won't give you a definition. Really,  
2 it's going to be up to you and the other jurors what you  
3 decide it is.

4 You know, we talk about a lot of things  
5 and it's just going to depend on the facts. It could be  
6 something in his background. Some people tell us if he grew  
7 up in a poor neighborhood or maybe he was abused physically  
8 or mentally, that might be mitigating evidence. Other  
9 jurors tell us, I feel bad for him, but, look, a lot of  
10 folks grew up in an abusive home and once they were an  
11 adult, they have to be held accountable and they wouldn't  
12 view that as mitigating.

13 There's no right or wrong answer on that.  
14 Do you feel strongly one way or another on those types of  
15 issues?

16 A. Well, I believe what you said that when you  
17 become an adult you are held accountable for what your  
18 actions are.

19 Q. Okay.

20 A. I believe that when you are growing up, you do  
21 know the difference between right and wrong and you still  
22 know the difference between right and wrong when you get  
23 older.

24 Q. A lot of people feel that way. Another issue  
25 that comes up is -- maybe here's one that many people feel

1 is mitigating. We talk about mental retardation, someone  
2 with a learning problem. It's not to the point where they  
3 don't know right from wrong, but it's something they were  
4 born with and they don't have a problem with. Maybe they,  
5 you know, they were just following along. It was a young  
6 person and they are not very intelligent. You may view that  
7 as mitigating.

8 It's just going to depend on the facts,  
9 things like that. As I said before, you don't have to tell  
10 us today what you think is mitigating. You don't have to  
11 tell the Court. All you have to be able to do as a juror is  
12 say, my mind will be open to that type of evidence and I  
13 will look at it and if I think in my heart and mind that  
14 something is sufficiently mitigating that I think the  
15 person's life should be spared and get a life sentence and  
16 they wouldn't walk out, I could answer the question that  
17 way. If I don't believe that way, I will answer it no, just  
18 base it on the facts of each case.

19 Do you feel that you can do that, keep  
20 your mind open to that evidence and then make the decisions?

21 A. Yes.

22 Q. Okay. Again, it's hard for us because we  
23 can't preview the facts. It's just something that you are  
24 going to have to wait and hear. You may, if you were on a  
25 hundred death penalty cases, there might be one where you

1 think there was a sufficient mitigating evidence for a life  
2 sentence or there might be 20 or 30 or 40, just depending on  
3 the facts of each case.

4 And just because you found him guilty or  
5 found he's a continuing danger to society or believe beyond  
6 a reasonable doubt he anticipated a life would be taken,  
7 there might be a fact situation where you think, even though  
8 I know those things, I also feel the right thing to do in  
9 this case would be to give a life sentence and you can do  
10 that, just depending on what the facts tell you to do?  
11 Again, the law contemplates that you will wait and make  
12 these decisions just based on the evidence and do that and  
13 just let the chips fall where they may and you feel you can  
14 do that?

15 A. I don't know about letting the chips fall  
16 where they may. I would listen to the evidence.

17 Q. What I mean by that is you make your decision  
18 based on the evidence?

19 A. Yes. I would hear it all, but I think that  
20 depending on what he did in his past, I don't know if that  
21 comes up in the trial or not.

22 Q. Yes.

23 A. I think if my decision that he was guilty, if  
24 I think -- if my decision that he was guilty, if things came  
25 up from his past, I don't know if that would have any waiver

1 on my decision.

2 Q. Well, yeah. And we could go over hypothetical  
3 situations, I mean, situations, I mean, he's guilty and you  
4 think he's actively involved and he's been in the pen 20  
5 times and done horrible things in the past. Obviously,  
6 that's probably going to weigh real harshly against him. Or  
7 you could have a situation where he's never been in trouble  
8 and some other mitigating facts.

9 A. Correct.

10 Q. What I mean by that is it's going to depend on  
11 the facts.

12 A. Correct.

13 Q. But you can wait and make that decision based  
14 on each case, whatever case you sat on, you would weigh and  
15 listen to everything and then make a decision?

16 A. Yes.

17 Q. And if you think the question should be  
18 answered yes, then give them a life sentence. You could  
19 answer it that way, if you believe that's what the evidence  
20 told you to do?

21 A. Yes, yeah.

22 Q. Again, I can't preview the facts. I'm just  
23 asking you, can you keep your mind open and consider the  
24 question and then answer the question based on the facts?

25 A. Yes, I could do that.

1 Q. And if it's a yes, it's a yes. And if it's a  
2 no, it's a no. That's all I'm asking you to do and that's  
3 all the law contemplates you to do. When we start talking  
4 about this, usually we conjure up very bad crimes and  
5 sometimes that weighs on jurors' answers.

6 But I think what we need to emphasize is  
7 the bottom line is can you make the decision on the facts of  
8 each case and keep your mind open and then make the  
9 decision?

10 A. Yes.

11 Q. Okay. Let me go over a few rules that apply  
12 in every criminal case, not just this one. And you will be  
13 familiar with most of these. The presumption of innocence.  
14 At the beginning of the case the defendant is presumed to be  
15 innocent. The fact that he's been arrested, indicted, or  
16 that we're even going through this process is no evidence of  
17 his guilt. You have to wait and listen to the witnesses as  
18 they testify and then make your decision based on what they  
19 say.

20 You feel you can follow that rule of law,  
21 start the defendant off with that presumption of innocence  
22 and require us to prove beyond a reasonable doubt that he's  
23 guilty?

24 A. Yes.

25 Q. Okay. As I said, that rule of law applies on

1 each case. Everyone starts out with that presumption and  
2 then we overcome it by putting on the evidence. That burden  
3 of proof never shifts to the defense. It stays on our  
4 table. Now, you can anticipate the defendant will try to  
5 prove his innocence or at least try to poke holes in the  
6 State, but they are not required to have a burden of proof.  
7 You can't require them to prove things. The requirement  
8 should be on the State here to prove to you beyond a  
9 reasonable doubt.

10 If they don't ask a question or raise a  
11 finger and at the close of all the evidence you don't think  
12 we have met our burden, you have a reasonable doubt in your  
13 mind, it's pretty simple, you find him not guilty. If you  
14 don't have a reasonable doubt and we have met our burden,  
15 you find him guilty. Again, it's just based on the evidence  
16 of each case.

17 But will you require us to prove beyond a  
18 reasonable doubt the defendant is guilty?

19 A. Could I require you to prove to me?

20 Q. Yes. The State, because that's the law.

21 A. If that's the law.

22 Q. The law in each case is the State has that  
23 burden of proof.

24 A. And the law is that all defendants are  
25 innocent until proven guilty.

1 Q. Right.

2 A. But if I already had that feeling that he's  
3 guilty, am I answering incorrectly?

4 Q. Again, that goes to the bottom line of what we  
5 talked about earlier. You have read about the case, like  
6 most of the jurors. And the bottom line comes down to this,  
7 can you just make your decisions based on the evidence you  
8 hear in the case? And I know you can't put it out of your  
9 mind, but you can't base your decisions on what you read or  
10 heard or seen on TV.

11 And this case, some people can do that,  
12 follow the law, because, obviously, what I said before is  
13 the good evidence or the reliable evidence is what you hear  
14 from the actual witness stand.

15 You told me earlier you thought you could  
16 do that. You could -- and when you say you could do that,  
17 what you will have to be able to do is presume him innocent  
18 and require us to prove the case beyond a reasonable doubt.  
19 In other words, you can't say I saw this stuff on TV, so I  
20 think he's guilty already.

21 A. I understand. I will follow the law.

22 Q. Okay. Do you feel that you can give him that  
23 presumption of innocence?

24 A. I would have to, if I'm going to follow the  
25 law.

1 Q. And you feel that you can follow the law?

2 A. It would be my duty to follow the law, yes.

3 Q. And you would be able to do that in this case?

4 A. Yes.

5 Q. Okay. Now, that burden of proof goes to every  
6 portion of the indictment. We have to prove everything we  
7 allege in the indictment. We have to prove to you beyond a  
8 reasonable doubt. And if we fail on just one element of  
9 that offense, one portion of it, then you would have to find  
10 the defendant not guilty.

11 Let me give you a couple of examples. If  
12 at the end of the trial you are not sure we proved the  
13 identity of the killer, who the person was that committed  
14 the offense, obviously, that's a reasonable doubt. It's a  
15 pretty simple example. You would find him not guilty.

16 Another example we give is the county.  
17 We have to prove it happened in Dallas County. I don't  
18 anticipate this happening, but I like to give a way-out,  
19 kind of a way-out example to demonstrate how the law works.  
20 We prove everything else to you, who the person was, how  
21 they committed the offense, who they murdered, but you had a  
22 reasonable doubt about the county, maybe it actually  
23 happened in another county, Ellis County, Kaufman County.  
24 You would have to acquit the defendant and find him not  
25 guilty.



1                   Now, that would be a horrible mistake on  
2     our part. We, obviously, would be fired if we made that  
3     type of horrible error in our preparations and I don't  
4     anticipate something like that would happen. But the point  
5     of that example is this. The jury can't help us out. If we  
6     screw up that badly and miss out on our burden, you can't  
7     say, well, I'm going to say I'm going to give them that one.  
8     I'm going to ignore the fact that they have totally messed  
9     this case up. You have to be, as a juror, kind of like a  
10    referee, you know, just call balls and strikes -- or an  
11    umpire, call balls and strikes. You can't give us a helping  
12    hand. You have to follow the law and find the defendant not  
13    guilty, if you required us to prove our case beyond a  
14    reasonable doubt on every portion of the indictment on this  
15    case. Can you do that?

16           A.       Yes.

17           Q.       In a criminal trial, if a person or defendant  
18    wants to testify, he can. No one can stop him. He can tell  
19    his story, you know, judge him like you would any other  
20    witness. If he chooses not to testify, the Judge would  
21    instruct you that you can't hold that against him. In other  
22    words, you would have to make your decision just based on  
23    all the other evidence you heard in the case. You can't  
24    say, well, I think he's guilty because he didn't testify.  
25    There could be a lot of reasons why someone would choose not

1 to testify.

2 They could be very guilty and look bad.  
3 They might actually not make a good witness. They could be  
4 nervous. They could be not educated very well and an  
5 experienced prosecutor could make them look bad. There are  
6 -- they could be following the advice of their lawyers. I  
7 don't think they have proven their case and I don't want you  
8 to say anything. There could be a number of reasons.

9 The law says if a person chooses not to  
10 incriminate themselves or not testify, just don't pay  
11 attention to it and base your decision based on everything  
12 else. Could you follow that rule?

13 A. Yes.

14 Q. Okay. Police officers testify oftentimes in  
15 criminal cases. A lot of people have respect for the job  
16 they do. But police officers have to be judged like any  
17 other witness. There is some good ones. There's some bad  
18 ones. You can't start them out ahead of the other  
19 witnesses. You have to judge them, judge their credibility  
20 as a witness when they hit the witness stand.

21 Could you do that, judge them as you  
22 would any other witness, judge their credibility?

23 A. Yes, sir.

24 Q. All right. Sometimes we hear about parole  
25 laws, that sort of thing, that are in the news. Makes a lot

1 of controversy sometimes. But what the Judge will instruct  
2 you in this type of case is if a defendant gets a capital  
3 life case, he would have to stay in prison forty calendar  
4 years, day for day, before they become eligible for parole,  
5 and then that doesn't mean they are paroled out. That means  
6 they become eligible.

7 The other instruction they give you is  
8 this. You can't consider the parole laws in making your  
9 decisions. You have to consider a life sentence to be a  
10 life sentence, because someone else makes those decisions.  
11 Do you feel that you could follow that rule?

12 A. Yes.

13 Q. The bottom line is this, I think that you  
14 would be able to do this, is, again, as a juror, you would  
15 have to wait and listen to all the evidence before you make  
16 your decisions, guilt/innocence stage, or how these  
17 questions should be answered, and then answer them the way  
18 the evidence tells you to answer them.

19 Some cases could call for a death penalty  
20 and other cases might call for a life sentence. Some would  
21 be guilty and some not guilty. It would just depend on the  
22 facts of each case.

23 Also, as we talked about several times,  
24 comes down to this. You have to make your decisions based  
25 solely on what you hear in the case, not on anything that

1 you have read or heard about. And you feel you can do that?

2 A. Yes.

3 Q. Okay. Do you have any questions over anything  
4 that I have gone over?

5 A. No. It's cold up here, though. I'm shaking.

6 Q. I appreciate your patience for everything I  
7 have gone over and that's all the questions I have.

8 A. Thank you for mine.

9 MS. BUSBEE: Can we have a moment?  
10 Approach the bench?

11 THE COURT: You may.

12 (Bench conference)

13 CROSS-EXAMINATION

14 BY MR. SANCHEZ:

15 Q. Good morning.

16 A. Good morning.

17 Q. How are you doing?

18 A. Good.

19 Q. Good. My name is Juan Sanchez. I'm going to  
20 ask you some questions that have to do with some of your  
21 answers that you have given already, some things that we  
22 want to explore. Okay?

23 A. Okay.

24 Q. But before we start that -- and have you ever  
25 called in to "The Ticket" yourself or you just listen to it?

1 A. I just listen to it.

2 Q. You have never been P1 (phonetic)?

3 A. I don't know if I can, I'm considered a P1  
4 but, I listen to it all day.

5 Q. But you expressed in your answers that deep  
6 down you feel that he's already guilty of what they are  
7 charging him with, Mr. Murphy here, is that true?

8 A. Yes.

9 Q. And why do you feel that's he's guilty  
10 already?

11 A. Because he was with all the other people and  
12 he contributed to that day.

13 Q. And I saw that you had strong feelings, I  
14 mean, you got emotional up on the stand when the State was  
15 asking you questions. Did you follow this closely in the  
16 newspaper when this happened?

17 A. Well, just by reading about it and on TV and  
18 just the emotional situation that happened with his family  
19 and members of the family.

20 Q. Did you follow that closely while it was  
21 happening?

22 A. I don't know how closely you mean. Just by --

23 Q. How closely did you follow that? Did you look  
24 in the paper for it while it was happening? Did you get on  
25 the Internet?

1 A. No, I did not get on the Internet. I listened  
2 to it when the news came on, whenever I had the news on.

3 Q. And in your heart, your gut, you feel he's  
4 already guilty of what they are charging him with before you  
5 heard evidence, based on what you know already?

6 A. Based on what I know already. But I also told  
7 the prosecutors that I could listen to all the evidence  
8 given to me before making a final decision.

9 Q. And I understand that's what you told them,  
10 but would that in some way play a part in you listening to  
11 this case? I know it's not easy to put it out of your mind,  
12 but deep down if you are sitting in those chairs over there,  
13 are you going to be remembering everything that you read or  
14 be affected emotionally like you were today by what you know  
15 already?

16 A. I can't -- I can't see what's in the future.  
17 I think that I can't tell you whether I would get emotional  
18 or not. I probably would.

19 Q. It's possible?

20 A. It could be possible.

21 Q. Also, when you first started answering  
22 questions, you indicated that you thought the death penalty  
23 should be given for this offense; is that correct? Is that  
24 the way you said that?

25 A. If that's what I said.

1 Q. What did you mean by that?

2 A. The severity of it.

3 Q. Okay. And were you talking about this, the  
4 specific facts of this case or just any case where an  
5 officer may be killed?

6 A. Well, I believe that when any officer is  
7 killed, the only purpose of killing an officer is to get  
8 away.

9 Q. And do you believe that that should be an  
10 automatic death penalty at that point? I mean, once you  
11 find somebody guilty of killing a police officer, do you  
12 believe that should be an automatic?

13 A. You mean without a trial?

14 Q. No. Once you had a trial. You don't have to  
15 go over all the Special Issues that you have over here that  
16 the death penalty should be assessed at that point. Do you  
17 think that?

18 A. No. I believe that you should have these.

19 Q. That's my concern is that you said that the  
20 death penalty should be given in cases like this one. And  
21 were you talking specifically about the facts of this case?  
22 Is that what you were talking about?

23 A. Like, I don't know. I guess so.

24 Q. You can't -- remember, the law said -- I know  
25 it's hard to remember what you were saying, what you meant

1 exactly at that time, but is that possible that you have  
2 already made up your mind that if you were to convict Mr.  
3 Murphy of this offense, that the death penalty would be the  
4 first thing on your mind for you --

5 A. I think it's on anybody's mind. I mean, I  
6 don't think it's just me.

7 Q. Is it possible would that be on your mind  
8 before you even looked at the Special Issues?

9 A. I think it would be, but I could be openminded  
10 and go through those Special Issues as the evidence was  
11 presented to me.

12 Q. And as you were looking at those Special  
13 Issues, would you be -- would you already start -- let me  
14 put it this way. When you talk about the Special Issues and  
15 you found somebody guilty of capital murder, that person is  
16 basically sitting on a life sentence unless you can answer  
17 those questions in the way that -- the way the State talked  
18 to you about. Does that make sense to you? In other words,  
19 it's a life sentence. You found somebody guilty of capital  
20 murder, it's a life sentence at that point and unless you  
21 can answer those Special Issues in the way that the State  
22 talked about, then it would stay a life sentence. Does that  
23 make sense to you?

24 A. Uh-huh.

25 Q. In other words, those would be three hurdles



1 or three things that would have to happen, three different  
2 decisions, that would have to occur before somebody could be  
3 assessed a death penalty. Does that make sense to you?

4 A. Yes.

5 Q. And based on the fact that you already feel  
6 he's guilty of this offense, could you really hold the State  
7 to their burden of proof, burden in proving Special Issue  
8 No. 1 and Special Issue No. 2 to prove those beyond a  
9 reasonable doubt?

10 A. Yes.

11 Q. You would require them to do that?

12 A. Isn't that the law? I mean, that's the law.

13 Q. I know that's the law, but could you do it?

14 A. Yes.

15 Q. Would the fact that you already feel he's  
16 guilty before we start the trial in any way cause you to  
17 lessen their burden?

18 A. I don't think so.

19 Q. You don't think so? And when I hear "I don't  
20 think so", that means it could also --

21 A. It's not a definite, is it?

22 Q. Exactly.

23 A. I believe that I could go through these issues  
24 and answer it with the evidence given to me.

25 Q. What do you think about a life sentence in

1 prison? What do you think about that when you hear that  
2 somebody receives a life sentence in a capital offense?  
3 What do you think about that? Do you have any feelings that  
4 way?

5 A. No. I mean, that's the way the jury decided.

6 Q. What would be your personal feelings about it?  
7 Would it be a disappointment to you if somebody received a  
8 life sentence or would you say probably that's what that  
9 person deserved in that case? What are your feelings about  
10 that?

11 A. Each case is different, so it depends.

12 Q. Do you think a life sentence is a deterrent,  
13 as opposed to the death penalty being assessed?

14 A. I don't -- I don't know. A deterrent? I  
15 don't believe it's a deterrent. I don't understand -- I  
16 don't understand what you mean by --

17 Q. What are your general feelings about someone  
18 receiving a life sentence? Do you think it's a severe  
19 punishment or do you think it's not a severe punishment?

20 A. I believe it's a severe punishment in a way  
21 that that person will possibly never see the outdoors again  
22 and he won't be able to enjoy the things that other people  
23 do. I mean, that is a punishment in itself when you are in  
24 a cell.

25 Q. Do you think that could ever be an appropriate

1 punishment in a capital murder case?

2 A. An appropriate?

3 Q. Yes.

4 A. Gosh, I don't believe so.

5 Q. And you think that would affect?

6 A. I don't know -- I've answered some questions  
7 one way and here I'm answering yours the other way and I  
8 feel that I'm not --

9 Q. That's why we ask these questions, both sides  
10 have equal time to ask questions. But the fact that you  
11 don't believe it would ever be an appropriate sentence in a  
12 capital case, that would somehow affect you answering these  
13 Special Issues?

14 A. Would you repeat the question? I'm sorry.

15 MR. SHOOK: Approach the bench?

16 THE COURT: Just a minute.

17 (Bench conference)

18 THE COURT: Ms. Garber, you are cold this  
19 morning. Yesterday we were all. They can never get it  
20 properly adjusted. We appreciate your time and service here  
21 today, but the parties have agreed that this is not going to  
22 be the case for you. You probably know just a little too  
23 much and have your opinions just a little too cemented to be  
24 on this jury and we appreciate your honesty. That's the  
25 main thing. You have learned a lot about the law, probably

1 more than you ever wanted to know.

2 PROSPECTIVE JUROR: No, I found it  
3 interesting.

4 THE COURT: And this process for you  
5 today will be concluded. Thank you for your time and  
6 service to the Court and you are free to go.

7 PROSPECTIVE JUROR: Thank you.

8 [Prospective juror out]

9 THE COURT: Let the record reflect that  
10 the parties have previously scheduled to talk to juror No.  
11 672, Mr. Kenneth Lewis Chance. The Court has had contact  
12 with the mother of Mr. Chance and the employer of Mr. Chance  
13 and he is somewhere in Eastern Europe, far deep undercover,  
14 working under the United Nations assignment and has been  
15 unable to have contact in the last two weeks.

16 Mr. Wirskeye, any problem with the State  
17 agreeing to excuse this juror?

18 MR. WIRSKYE: No, none from the State.

19 THE COURT: Defense?

20 MS. BUSBEE: No, Your Honor.

21 THE COURT: The Court will excuse  
22 Mr. Chance. For the record the other agreement we have is  
23 to move Mr. Frank Arena from Thursday, September 4, to  
24 Friday, September 5. I will print a new schedule  
25 accordingly. That will conclude this morning's voir dire

1 and reassemble at 1:15 for the afternoon.

2 (Recess)

3 THE COURT: Brad Richards.

4 [Prospective juror in]

5 THE COURT: Good afternoon, Mr. Richards.

6 How are you?

7 PROSPECTIVE JUROR: Good.

8 THE COURT: Welcome to the 283rd and  
9 thank you for being here on time. Have you had enough time  
10 to review the outline that I gave you?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: And the bottom line is, I  
13 believe you said in your questionnaire, understand you were  
14 sworn to tell the truth. I think your quote stood out in my  
15 mind. If called back, "I will answer all questions  
16 truthfully." And I appreciate that very much. My job is to  
17 be sure that you understand the law.

18 If you have read that, you can see it can  
19 get complicated pretty quick.

20 PROSPECTIVE JUROR: Yeah.

21 THE COURT: So the lawyers are going to  
22 spend some time with you to go over those issues and be sure  
23 that you understand them.

24 PROSPECTIVE JUROR: Okay.

25 THE COURT: And then, once again, if you

1 have any questions in this process, please discuss it. If  
2 you don't understand, they want to shade a different  
3 direction, just say so.

4 PROSPECTIVE JUROR: Okay.

5 THE COURT: Many people look at this as  
6 an intimidating process. You might be on trial. That's not  
7 the issue. But it's the only way that we can actually talk  
8 to an individual juror. And the key is that you understand  
9 the law.

10 PROSPECTIVE JUROR: Okay.

11 THE COURT: The only question that I have  
12 for you before I let the lawyers voir dire is we have  
13 scheduled this trial to begin on November 10th, two weeks,  
14 as I said in my outline.

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Do you have any problem  
17 serving the Court for those two weeks?

18 PROSPECTIVE JUROR: No.

19 THE COURT: Thank you. Mr. Shook?

20 BRAD RICHARDS,  
21 having been duly sworn, was examined and testified as  
22 follows:

23 DIRECT EXAMINATION

24 BY MR. SHOOK:

25 Q. My name is Toby Shook and I'm going to ask you

1 questions on behalf of the State this afternoon. As the  
2 Judge said, we're just interested in your honest opinions  
3 and we try to stay somewhat informal. If you have any  
4 questions at any time, feel free to ask. Okay?

5 A. Okay.

6 Q. Usually we select jurors for most cases just  
7 out of a panel. But because it's a capital murder case in  
8 which we're seeking the death penalty, we have this  
9 procedure where we talk to each juror individually. You  
10 provided us with a lot of valuable information in your  
11 questionnaire and we appreciate you taking the time. I know  
12 it was a lot of questions. Believe it or not, it actually  
13 saves you time when you come down here. And I'm going to  
14 ask you just a few questions off of that, do some followup  
15 questions. We'll talk about capital murder, the death  
16 penalty, and how you feel about that and some of the rules  
17 and laws that apply to that type of case.

18 A. Okay.

19 Q. You are currently employed with the Dallas  
20 County Appraisal?

21 A. Central Appraisal District.

22 Q. Yes.

23 A. Yes, sir.

24 Q. And have been doing that a little over a year,  
25 I think?

1 A. Three and a half years.

2 Q. Okay. I know we have always -- we've used  
3 y'all's website, I know a good source for looking at houses  
4 and good background information. I think everyone else does  
5 that, too, nowadays, all on the web. But I was also looking  
6 at -- we asked about past work history and it intrigues me  
7 that you used to work for the Texas Rangers Ball Club?

8 A. Yes. I was assistant groundskeeper for 11  
9 years.

10 Q. What years were you out there from?

11 A. I was out there from '81 through '97,  
12 full-time from '87 to '97.

13 Q. So you were at both ballparks?

14 A. Yes, sir. I helped build the new one.

15 Q. New one. Do you still go to a lot of games  
16 out there at the new one?

17 A. Two or three a year.

18 Q. It's a nice ballpark. I'm always amazed how  
19 they keep that thing that green and the way the field drains  
20 so quickly and that sort of thing.

21 A. Yeah, a lot of sand.

22 Q. Let me talk to you a little bit about capital  
23 murder. You know it's a death penalty case in which the  
24 State is seeking the death penalty. And you have told us on  
25 your questionnaire that you do believe in the death penalty



1 as a law.

2 What I want to do is just ask you to  
3 follow up on that a little bit and tell us why you believe  
4 in the death penalty or what purpose you think the death  
5 penalty serves in our society?

6 A. Well, I think, like I answered in the  
7 questionnaire, if someone were to go on trial and it proved  
8 beyond a reasonable doubt that he did, you know, take  
9 another's life, I mean, I'm not -- I think I said in there I  
10 don't believe so much an eye for an eye as far as like if  
11 you steal, you know, cut your hand off or if you lie, you  
12 know, cut your tongue out like they did in the Biblical  
13 stories, but just, you know, as far as, you know, I'm a  
14 religious guy and I just feel that, you know, if you take  
15 someone's life, you know, you should pay with your own.

16 There are advocates that feel that  
17 spending the rest of your life in jail, that's a harder --  
18 that would be a harder sentence than just someone, you know,  
19 being put to death by lethal injection. Some people feel  
20 that's an easier way out. I mean, there's arguments to both  
21 sides, but I just feel if you do take someone -- or  
22 someone's life, that you should pay with your own life.

23 Q. Okay. And I think that you also put in the  
24 questionnaire that it depends on -- it's appropriate in some  
25 murder cases. Basically, it comes down to the particular

1 facts of that case?

2 A. Yes.

3 Q. Some cases it might be appropriate and other  
4 cases another punishment might be appropriate?

5 A. Yes.

6 Q. Just depending on those particular facts?

7 A. Yes.

8 Q. Okay. I take it that this is something you  
9 believed in as a law for some time, most of your adult life  
10 or since you have matured. Have you always been in favor of  
11 capital punishment?

12 A. Yes, I have.

13 Q. Okay. In Texas the death penalty is reserved  
14 not for every type of murder case. We have reserved it just  
15 for exclusive types. We have a host of murder cases, brutal  
16 murder cases, in which someone gets a life sentence. The  
17 death penalty is reserved for murder cases, intentional  
18 killing, not legal justification, not accident, or  
19 self-defense, but a killing that occurred during an  
20 aggravated fact.

21 If you murder someone during the course  
22 of another felony, such as robbing someone, 7-Eleven clerk,  
23 if you shoot the clerk, that could be a death penalty case.  
24 Breaking into someone's home, killing someone in the house,  
25 that could be a death penalty case because you are

1 committing that felony. Also, during a kidnapping or during  
2 a rape or arson. Those could all be death penalty cases,  
3 also.

4 Specific types of victims come under the  
5 statute. Murdering a police officer on duty, a fireman on  
6 duty, a prison guard on duty, it could be a death penalty  
7 case. Murdering someone for profit or money. If you are a  
8 hitman-type situation, that could be one. Murder of a child  
9 under the age of six could be a capital case. And then  
10 murder of more than one person like a mass murder or serial  
11 killer situation could be a death penalty case. But those  
12 are the types of specific cases we reserve for consideration  
13 of the death penalty.

14 Does that list fit your definition, your  
15 personal definition of types of cases you think could be  
16 appropriate, depending on the facts of those cases?

17 A. Yes.

18 Q. Okay. Let me go over another area while I'm  
19 on that. When we think of capital murder, we usually think  
20 of the examples that come to mind is the actual triggerman.  
21 If I went into a 7-Eleven store, robbed it, the clerk, and  
22 then shot him during the course of that, that's what you  
23 think of as the actual triggerman.

24 The law says that when someone commits a  
25 felony or any type of crime, if more than one person assists

1 them, if there is an accomplice, they call it, those people  
2 can be held responsible, also. Sometimes it takes more than  
3 one person to commit a crime. It takes groups of people.  
4 They may have different roles in the crime, but if they are  
5 all assisting, aiding, abetting, helping commit that crime,  
6 then they can all be held responsible, even though some had  
7 greater roles.

8 And the same is true for capital murder.  
9 An example I give often is say Mr. Wirskye and I and another  
10 individual wants to rob a bank. I may have the gun. That's  
11 the plan. I go in with the gun. Mr. Wirskye has a bag.  
12 We're going to put the money in. He goes in the bank with  
13 me and the other guy waits out in the getaway car. He's  
14 going to warn us if somebody is coming. He will have the  
15 car running so we can have a fast getaway.

16 I cover everybody, threaten them, and  
17 then Mr. Wirskye goes and empties the cash registers. We're  
18 working as a team. Maybe at some point in time somebody  
19 tries to run out of the bank, they say something I don't  
20 like, or maybe Mr. Wirskye sees them go for an alarm and  
21 tells me and I shoot them.

22 We leave the bank and we're arrested soon  
23 after. I'm, obviously, the one that killed that person. I  
24 could be prosecuted for capital murder. I could get the  
25 death penalty because I'm the triggerman. The law says that

1 Mr. Wirskye could, also, be prosecuted because he's actively  
2 participating in it and the same for the getaway driver,  
3 just depending on the facts, because they actively  
4 participated in that event, even though they didn't actually  
5 pull the trigger. They could even ultimately get the death  
6 penalty, depending on the facts.

7                   Some people agree with that law. They  
8 think that the law should apply to accomplices to deter  
9 them. Other people draw a line that -- they're for the  
10 death penalty for a triggerman in those situations, but they  
11 would not want the death penalty or capital murder to apply  
12 to accomplices, maybe a long prison term or some other term,  
13 but it just doesn't set with them. How do you feel about  
14 that? Do you think accomplices should be prosecuted and  
15 ultimately receive the death penalty, depending on the  
16 facts, or would you only reserve the death penalty, if it  
17 was up to you, for the actual triggerman?

18           A.       I think it would just depend on the evidence.  
19 But I would be more inclined to -- I mean, I guess the  
20 circumstance could be, you know, brought down to where say  
21 maybe the getaway driver and the guy that's holding the  
22 money, maybe those three made a pact they are not going to  
23 kill anybody, if something like that were to come out, and  
24 he on his own, did that. I would probably be more inclined,  
25 the guy that was just bagging the money and getaway driver,

1 you know, maybe not the death penalty for those.

2 Q. Okay.

3 A. That's not to say I don't believe in it.  
4 That's what I put on my questionnaire. I think there are  
5 circumstances that even accomplices would be associated with  
6 capital, you know, crime, such as you described that they  
7 might not be charged with the death penalty.

8 Q. Is it something that you believe that if it  
9 were up to you, we could make you king of Texas or Governor  
10 of Texas, king of Texas, and if you were to decide about our  
11 death penalty laws, would you have a death penalty for an  
12 accomplice or would you put it just for the triggerman, the  
13 person that actually caused the death?

14 A. I think that I would probably be more inclined  
15 to have it for the triggerman.

16 Q. And would not have it for the accomplices?

17 A. No.

18 Q. And let me get into one other area I meant to  
19 ask you about. Everyone has -- just about everyone has seen  
20 some media coverage concerning this event. I believe you  
21 saw some of it on radio? Television?

22 A. I think on that I put I was unfamiliar with  
23 this.

24 Q. Well, there was another -- there was another  
25 portion and it's been a while since we asked this question

1 and I know you don't have the questionnaire in front of you,  
2 but we asked this question, have you ever watched any TV  
3 shows or movies or read any books, articles, dealing with  
4 the death penalty or life on death row and you said, yeah.  
5 You said, "I saw the media coverage concerning the Texas  
6 Seven and have seen TV shows and movies where this has been  
7 a subject."

8 A. Yes.

9 Q. Are those some -- what shows were those?

10 A. Probably, you know, in the past I've seen, you  
11 know, various "Law and Order" shows. I watch that CSI every  
12 once in a while on Thursday.

13 Q. The coverage on the Texas Seven, was that one  
14 of the documentaries they had on it?

15 A. No. I think it was probably just watching the  
16 news every night, just them leading into when it all broke  
17 out and it sort of went away for a little bit. And then I  
18 drive by the courthouse every day like on my way to work, so  
19 as those guys were going on trial, you know, you would see  
20 the Channel 8 and Channel 5. I didn't actually see the  
21 media coverage, but I saw the vans out in the morning and  
22 the news like at night 6:00 and 10:00. The first for or  
23 five went on trial here.

24 Q. Did you follow those cases very closely?

25 A. No, not very closely.

1 Q. We can't get into the actual facts of the  
2 case, but this is one of the Texas Seven trials. They've  
3 been going on for some time. Obviously, a lot of people  
4 have seen coverage of it when it first happened and followed  
5 it. We can't get into the general facts, but, obviously,  
6 there was a lot of media coverage. I can tell you that Mr.  
7 Murphy is one of the persons involved in that, according to  
8 our allegations. We're prosecuting him concerning the  
9 shooting that happened at the Oshman's back in December of  
10 2000.

11 A. Okay.

12 Q. So what I need to ask you now is this, now  
13 that you know that, how that publicity might affect you as a  
14 juror. The law is this. Just because you have seen  
15 publicity doesn't mean that makes you ineligible to be a  
16 juror. It just depends on if you made up your mind or it  
17 might affect you in some way. The Judge would instruct you  
18 if you have seen any media coverage, we want you to put that  
19 out of your mind and not let that affect your decision, just  
20 make your decision on in the court.

21 Some people can do that and some people  
22 can't. Some people have watched the coverage more than  
23 others and sometimes that affects their decisionmaking  
24 process. They will tell us, I've already made up my mind as  
25 far as guilt/innocence or the punishment and that sort of



1 thing. It just comes down to that individual and how much  
2 they observed it, what kind of opinions they formed and how  
3 strongly they formed those opinions, to be quite frank with  
4 you.

5 Now that you know this is actually one of  
6 the Texas Seven cases, do you think that would affect you in  
7 any way?

8 A. I don't think it would.

9 Q. Okay. Do you think you would be able to  
10 ignore what you have read and seen and decide the case just  
11 on its merits?

12 A. Yes.

13 Q. Okay. Now, let me get back to this accomplice  
14 business. Saying what you said that if it was up to you,  
15 you probably wouldn't have the death penalty for an  
16 accomplice. I will, also, tell you this now, that we're  
17 prosecuting the defendant under the theory of parties as an  
18 accomplice, not the actual triggerman.

19 Knowing how you feel about that, do you  
20 think then, you could ever assess the death penalty to  
21 someone who is not the actual triggerman, but just an  
22 accomplice situation?

23 A. I think I could. I think before I answered  
24 it, it would just depend on the circumstances and the  
25 evidence that was, you know, provided.

1 Q. Okay. What would be important to you, then,  
2 in that situation?

3 A. As far as, you know --

4 Q. If we're trying someone who was just an  
5 accomplice and not the actual triggerman.

6 A. I guess, like I said before, just the intent  
7 that they had, you know, when they went there. I mean, did  
8 they have any intent of actually killing anybody? Did they  
9 even care, you know, if they did? Were they just going  
10 there -- even though he wasn't the triggerman, you know, was  
11 it a group of them that just said, regardless, this is how  
12 we're going? If anybody gets in our way, any one of us  
13 could have shot. It just happens maybe it was one or two.  
14 That would be stuff that would be brought out in the trial,  
15 like the example I mentioned before like the guy in the car,  
16 sitting in the car. They, like, made a pact, just saying no  
17 one is going to get hurt because we don't want anything like  
18 that to happen and that guy would just -- I mean, that would  
19 be, I guess, hard to prove that.

20 Q. That would be my followup question.

21 A. It would be like just -- be like if they went  
22 on trial, I guess, separately, would be like one's word  
23 against another, I guess. It would be hard to believe, you  
24 know, which one was telling the truth. I mean, I can see it  
25 would be like a question if you were saying, like, we just

1 went in and somebody got in our way, we were going to do it  
2 and the other guy was maybe trying to save his skin and say,  
3 no, we said we weren't going to do this.

4 So I guess you just have to, you know,  
5 just hear the evidence and --

6 Q. The followup question, I think you answered  
7 it, would be hard to do sometimes. One thing, we may not  
8 know if they ever made a pact. Obviously, they -- if you  
9 are trying someone, the defendant doesn't take the stand,  
10 and you may only have the evidence there of what happened at  
11 the scene.

12 Now, jurors can infer someone's intent  
13 from the facts of the offense, how had he acted, how the  
14 killing took place, and that sort of thing, to look at  
15 someone's intent. Do you believe you can determine  
16 someone's intent by what happened at the offense, how the  
17 crime actually occurred? That sort of thing?

18 A. That question meaning -- you mean, like  
19 another juror being able to persuade you?

20 Q. No, whether you as a juror --

21 A. As a juror.

22 Q. -- could determine the defendant's intent from  
23 the facts of the case, how the crime was planned, how it  
24 went down, how brutal it was, their response when it  
25 occurred, that sort of thing, what happened afterwards, all

1 their actions. You know, the State could argue what would  
2 these actions show? This had to be their intent. Look what  
3 they did. And the defense could argue another way, but you  
4 may never have evidence of, well, they had a big meeting.

5 A. Yeah.

6 Q. And they decided this and that sort of thing.  
7 Most of the time that's what happens in cases. Lawyers make  
8 reasonable deductions from the evidence and argue the case,  
9 here's what the facts show. This had to be their intent.  
10 Some jurors can do that if they feel they can make judgments  
11 about people's intent just by their actions. Other jurors  
12 can't.

13 It's -- I just wanted to ask you how you  
14 feel about that? Do you think you can judge a person's  
15 intent? For instance, we're talking about intent to kill  
16 for an accomplice from the way the crime actually occurred?

17 A. I think I could.

18 Q. What would be important to you about that?

19 A. About determining, like, their intent?

20 Q. Yes.

21 A. Well, I mean, I guess it would just depend if  
22 he actually, you know, took the stand and it would just be  
23 the evidence that would be presented by the witnesses or --

24 Q. The Fifth Amendment may come into play in that  
25 the defendant does not have to take the stand. He may

1 exercise his Fifth Amendment right and then never testify.  
2 So we may never hear from the defendant. In fact, that  
3 often happens. And the Court will instruct you that you  
4 can't consider that as evidence of his guilt one way or the  
5 other.

6 Some people can do that. Some people  
7 can't. Would you be able to consider, follow that  
8 instruction, and not consider that as evidence against him,  
9 if he did not testify?

10 A. I think I could.

11 Q. Okay. Then if that situation occurs, you  
12 don't have his version or his story.

13 A. You just --

14 Q. You just have the evidence as it was  
15 presented. Do you think that you could determine a person's  
16 intent from circumstantial evidence of what happened there?

17 A. I think I could. I mean, we basically -- we  
18 would have to.

19 Q. Okay. Let me ask you, then, if it gets down  
20 to it, you do feel, then, in the prosecution of someone who  
21 is not the actual triggerman, a party to the offense, an  
22 accomplice to the offense, that you could, if the evidence  
23 showed you, sentence him to death, even though, you know,  
24 he's not the triggerman?

25 A. Yes.

1 Q. Okay. Let me let you take a moment. I want  
2 to talk to you about these Special Issues. If you would,  
3 look at Special Issue No. 1 and read that to yourself.

4 A. [Prospective juror complies.] Just read No.  
5 1?

6 Q. Yeah. We'll go over the other two in a  
7 minute. No. 1, that question is asking you to make a  
8 prediction about how the defendant would behave in the  
9 future, whether there's a probability he would commit  
10 criminal acts of violence that would be a continuing threat  
11 to society.

12 Do you feel you could make that type of  
13 prediction, if you are given sufficient evidence? Predict  
14 someone's future behavior that way?

15 A. I guess that would be hard to do. I guess,  
16 basically, all you could do is be presented what he's done  
17 in the past.

18 Q. All right.

19 A. You just have to make -- I mean, you have to  
20 use your own judgment to what he's done in the past and what  
21 happened to him when he was incarcerated. I guess you just  
22 have to predict, use your own judgment, and predict what he  
23 would do.

24 Q. What type of evidence would be important to  
25 you? What's done in the past? If he had done anything

1 wrong in the past?

2 A. I mean, I would think to make a future  
3 prediction, I mean, obviously, you don't know the gentleman  
4 personally like, you know, like your brother or friend. You  
5 don't know how he acted. You would be presented with  
6 evidence, I guess, of past crimes, past behaviors. You  
7 know, just look at that, look at that to try to make a  
8 future determination. I mean, it's hard.

9 Q. That type of evidence is admissible in that  
10 portion of the trial. But you don't get to those issues  
11 unless you have found the defendant guilty. But if they do  
12 have a past, if they've been to prison, committed criminal  
13 offenses, you can hear about those and hear from the  
14 witnesses, if they are available, to help you determine.  
15 You can, also, have the facts of the offense to tell you  
16 whether you think this person would be dangerous, how that  
17 crime was committed.

18 When we use the word there's a  
19 "probability" that the defendant would commit criminal acts,  
20 what does "probability" mean to you?

21 A. There's a good chance.

22 Q. Okay. How about committing "criminal acts of  
23 violence"? What do those words mean to you?

24 A. Be severe criminal acts, more of the severity  
25 like armed robbery, murder, just not -- I mean, I guess

1 criminal acts, I guess, is speeding ticket or just  
2 shoplifting to see, you know, criminal act, you think more  
3 of like murder, aggravated assault, your more severe crimes.

4 Q. And constituting a continuing threat to  
5 society. What does "society" mean to you?

6 A. Society, the general population. I guess, you  
7 know, the area that he's living in, the other people.

8 Q. Anyone and everyone that he may come into  
9 contact with?

10 A. Yes.

11 Q. Including people down in the prison system?

12 A. Yes, just anywhere.

13 Q. Question No. 1 you don't get to until you have  
14 found the defendant guilty of capital murder. At that point  
15 in time you can hear additional evidence of his background  
16 and then you get these questions. Question No. 1 starts out  
17 with a no answer. The State has to prove to you beyond a  
18 reasonable doubt it should be answered yes. The law says  
19 that just because you found him guilty of capital murder,  
20 you don't -- you don't automatically answer yes or find he's  
21 dangerous. You would have to depend on the facts. You  
22 would have to wait and require the State to prove that to  
23 you beyond a reasonable doubt. Could you do that?

24 A. I believe I could.

25 Q. Just because you found him guilty, you



1 wouldn't automatically answer No. 1 yes?

2 A. That's correct.

3 Q. Okay. Special Issue No. 2 asks whether the  
4 defendant actually caused the death of the deceased or did  
5 not actually cause the death of the deceased, but intended  
6 to kill the deceased or another or anticipated that a human  
7 life would be taken. That's the question that deals with  
8 the accomplice or the parties, as we call them.

9 First part, if you believe he actually  
10 caused the death, you could answer that yes. But the second  
11 part is he didn't actually cause the death of the deceased,  
12 but intended to kill the deceased or another or anticipated  
13 that a human life would be taken. You understand that part  
14 about we have to prove that he anticipated that a human life  
15 would be taken?

16 A. I think I understand that.

17 Q. What type of evidence or facts would be  
18 important to you? How could the State ever prove that to  
19 you that someone anticipated?

20 A. I guess it would just be other's testimony  
21 that you would be relying on. I guess you would have to  
22 believe what they are saying. I think like we were saying  
23 before, when they went up there, even though he wasn't the  
24 triggerman, they probably, you know, if they were all armed,  
25 you know, they were just saying no one could get in their

1 way or stop them, it could be any one of them. It was just  
2 a circumstance to where the unfortunate victim was at that  
3 time and where they were spaced. It could have been any one  
4 of them, you know, that killed him.

5 So it would be the anticipating that that  
6 life would be taken. I mean, if he was -- I mean, like the  
7 defendant was in the back of the store and the front of the  
8 store, just depending on where the victim was at the time  
9 something went wrong. I mean, any one of them could have  
10 pulled the trigger, which is probably saying, you know, all  
11 of them did.

12 Q. Do you think, then, those type of  
13 circumstances where everyone is armed and maybe they're  
14 violent men or something, that even if it's another part of  
15 the store, they all should be held responsible?

16 A. Yes. Because what I was saying before, like  
17 your example about the three men robbing the bank, if only  
18 one of them is armed, you are more liable to believe the  
19 other two saying they didn't anticipate taking a life  
20 because they were not armed, you know. You might be more  
21 likely to believe those two guys sitting out in the car, the  
22 guy bagging money or where they sort of had a pact where  
23 they weren't going to kill anybody and the guy with the gun  
24 did it. Obviously, if they weren't armed, they weren't  
25 going to be taken alive, but, then again, it would be hard

1 to make the determination. Those three could have said, you  
2 know, if we got to get away, you know, just be one is  
3 against the other.

4 I think in this case where all of them  
5 were armed, if they were all spread out just at the time  
6 something went wrong, any one of them could have taken one  
7 or more person's life. So I think they should all be held  
8 accountable in that situation like that.

9 Q. So it makes a big difference to you if they  
10 are all armed? It kind of goes to their intent, that sort  
11 of thing?

12 A. I would say that would go for more for their  
13 intent.

14 Q. And that's the situation where you think the  
15 accomplices could be prosecuted for the death penalty?

16 A. Yes.

17 Q. Okay. Let's talk about Special Issue No. 3.  
18 This question is kind of long. It's the mitigation  
19 question. You don't get to it unless you have found the  
20 defendant guilty, unless you have found he's a continuing  
21 danger to society, and unless you have found that he  
22 intended for the person to die or anticipated a person would  
23 die as a party, then you get to this last Special Issue,  
24 which is the mitigating question. Neither side has the  
25 burden of proof.

1                   It asks you to look at all the evidence  
2 that's been presented and then answer the question. If you  
3 would, take a minute to read question No. 3 to yourself.

4           A.       (Prospective juror complies.)

5           Q.       That question covers a lot of areas. It asks  
6 you to take into consideration all the evidence,  
7 circumstances of the offense, the defendant's character and  
8 background, and personal moral culpability of the defendant.  
9 It lets you look at everything, you know, how the offense  
10 occurred, then if there's any previous crimes he's  
11 committed, any good things he's done in his life, all that  
12 stuff, good and bad, and you look at it all. Then you  
13 decide if there's sufficient mitigating circumstances that  
14 would warrant a sentence of life in prison, rather than  
15 death.

16                   I can't tell you what mitigating evidence  
17 is going to be. It would be up to you and the other jurors.  
18 You don't even have to agree with the other jurors. I'll  
19 give you an example. You may have sat on a case -- you can  
20 sit on a case and the evidence might show the defendant went  
21 to Harvard and got three or four degrees. One juror might  
22 say that's mitigating because he's smart and did something  
23 with his life. And another juror might say, I would hold  
24 that against him. That's aggravating. Someone that has  
25 that opportunity or kind of brains shouldn't commit offenses

1 like this.

2 A. Uh-huh.

3 Q. We go over different areas and you don't have  
4 to agree or disagree with any of them. But for one example,  
5 we talk about a person's background, the way they were  
6 raised. You know, someone may come from a poor background.  
7 Perhaps they had a broken home or they were physically or  
8 mentally abused as a child. Some jurors tell us that could  
9 potentially be mitigating because it's a child in that  
10 shape. And other jurors tell us, you know, I feel bad about  
11 that, but a lot of people have a bad background and they  
12 don't go out killing people and that sort of thing. You  
13 have to be held accountable when you grow up.

14 How do you feel about that type of  
15 information?

16 A. I think I go with what you said on the latter,  
17 you know, it's probably too bad that something like that  
18 happened, but, I mean, you know, it's up to you to make a  
19 change.

20 Q. Okay. It kind of -- you don't -- you are not  
21 required to tell us what you think mitigating evidence would  
22 be. You just have to be able to tell the Judge I can keep  
23 my mind open to it and if I think there's something  
24 sufficiently mitigating, I can answer the question that way.  
25 Do you think that you can keep your mind open?

1 A. Yes.

2 Q. As you sit here today, does anything come to  
3 mind that you might view as potentially mitigating evidence?

4 A. In this particular trial or just --

5 Q. General.

6 A. For that Special Issue No. 3?

7 Q. Yes.

8 A. Not offhand, really.

9 Q. Most jurors don't. We recognize that  
10 hopefully you are not sitting around thinking about these  
11 types of things, but you think that you can keep your mind  
12 open to it?

13 A. Yes.

14 Q. Now, the procedures are the same in every  
15 capital case. If you find the defendant guilty, you would  
16 move on to the punishment phase. And if the State proved to  
17 you beyond a reasonable doubt that question No. 1 should be  
18 answered yes, question No. 2 should be answered yes, and if  
19 you answered no to the mitigating issue question, the Judge  
20 would sentence the defendant to death. If you answered the  
21 questions any other way, he would get a life sentence.  
22 Those are the only two possible outcomes, a death or life  
23 sentence, based on how you answer those questions.

24 Are you familiar with the method of  
25 execution in Texas?

1 A. I believe it's lethal injection.

2 Q. That's correct. It's in the news a lot. Are  
3 you aware that Texas leads the nation in executions?

4 A. I've heard that on the news.

5 Q. It's true. There's in excess, usually, of 30  
6 executions or more a year in Texas. The procedures are the  
7 same in this case. If the questions were answered yes, yes,  
8 and no, the Judge would sentence the defendant to death. He  
9 would be housed on death row.

10 At some point in time, the Judge would  
11 actually set a date of execution. On that date he would be  
12 given time with family, friends, a minister, a last meal.  
13 But at 6:00 p.m. the execution will take place in  
14 Huntsville. He's put on a gurney, strapped down. There's  
15 needles placed in his arm and witnesses come into the  
16 viewing room and view the execution. At that point in time  
17 the warden signals and substances are injected which stop  
18 his heart and his lungs. It happens in about 15 seconds.

19 It's a punishment that actually occurs in  
20 Texas. And you have told us philosophically the way you  
21 were raised that you believe in the death penalty for  
22 certain crimes, kind of told us that you understand the kind  
23 of rules or the procedures that they set out.

24 It's one thing to talk about being in  
25 favor of the death penalty and it's another thing when you

1 get down here on a jury and think a little more and actually  
2 participate in this event. You know yourself a lot better,  
3 obviously, than we will ever be able to know you. I just  
4 want to ask you this. As best you know yourself, if we put  
5 you on this jury and we prove these things to you like we  
6 think we can, because we fully anticipate we will prove the  
7 guilt and how these questions should be answered, which will  
8 result in his execution, do you think that you could  
9 actually take pen in hand and write in the answers, knowing  
10 that when you do that some day down the line the defendant  
11 here would actually be executed some day?

12 A. Yes.

13 Q. Okay. Mr. Richards, I've been over a lot of  
14 information. I think I've run out of questions, believe it  
15 or not. Do you have any areas you would like to talk about  
16 or anything else you think we should know about you?

17 A. No, I don't think so.

18 Q. Okay. That's all the questions that I have,  
19 then. I'm sure the defense will have questions for you, but  
20 I appreciate your patience and your cooperation.

21 A. Okay.

22 THE COURT: Mr. Sanchez?

23 CROSS-EXAMINATION

24 BY MR. SANCHEZ:

25 Q. Mr. Richards, I know one of the persons that



1 you respected the most is Sparky Anderson. Is that Sparky  
2 or Spanky? I couldn't read that.

3 A. Sparky.

4 Q. Baseball manager?

5 A. Yes.

6 Q. Did you meet him at the Rangers?

7 A. Yes. He was the stadium manager of the  
8 Tigers.

9 Q. Were you a Tigers' fan?

10 A. No, not really. I just like the way that he  
11 conducted his team.

12 Q. Okay. Followed his career? Went to the Reds  
13 and Tigers?

14 A. When I was growing up we lived in Indianapolis  
15 and Louisville (phonetic) when I was in elementary school  
16 and they were the closest team and he was the manager. So  
17 the Reds were my favorite team. So I just always followed  
18 him, not really the Tigers, just him.

19 Q. Okay. Is he a nice guy?

20 A. Yeah.

21 Q. All right. Well, I also noticed in your  
22 questionnaire that you indicated that you knew police  
23 officers that were in your Sunday School classes?

24 A. Yes.

25 Q. Who are they?

1           A.       Um, one is Larry Allen. He's with Dallas  
2 Police Department. I believe he's been there 10, 11 years.  
3 And another one is Chad Chadwick. He just started. He's  
4 still in training with Highland Park. I guess they have a  
5 unique system where they are firemen, policemen, and  
6 paramedics, so I think he started about a year or so ago and  
7 he's still in training.

8           Q.       Is your only contact with them through the  
9 Sunday School?

10          A.       No, we're -- we're probably -- we're -- one of  
11 the three couples we hang out with are the Chadwicks. We do  
12 stuff on Fridays, go to Six Flags, ballgames.

13          Q.       Close friends?

14          A.       Yes.

15          Q.       Do you have children yourself?

16          A.       We do have children.

17          Q.       Your children are friends with their children?

18          A.       Yes.

19          Q.       You understand that in this case the State is  
20 alleging that an officer was killed by Mr. Murphy or the  
21 party to it. Would the fact that you have close  
22 relationships with those people who are police officers play  
23 into your decision --

24          A.       No.

25          Q.       -- in this case? Would it somehow be in the

1 back of your mind when you are listening to the evidence  
2 that you know these police officers that well?

3 A. No.

4 Q. If -- would you have a problem if the State  
5 can prove their case to you beyond a reasonable doubt and  
6 finding Mr. Murphy not guilty and not having to explain  
7 yourself to your close friends?

8 A. I wouldn't have a problem with it, if the  
9 evidence warranted his verdict.

10 Q. Okay. And since you know police officers that  
11 well, would the fact that a police officer comes in and  
12 testifies -- let me just back up. The law says that every  
13 witness that walks in that you listen to starts off at the  
14 same level of credibility. Okay? You can't give him any  
15 more points or less points based on what they do for a  
16 living. Okay?

17 A. I understand that.

18 Q. That's before they testify. Of course, once  
19 they testify, you can decide, believe all or parts of what  
20 they have to say. Based on your close contact with  
21 somebody, two officers, is there any possibility that you  
22 would start off a police officer at a higher level of  
23 credibility before they have even opened --

24 A. No, I wouldn't.

25 Q. Also, when you first sat here and started

1 answering questions, you indicated that there was advocates  
2 out there who in a death penalty case, that life in prison  
3 or a life sentence would be somehow better and that you  
4 disagreed with that. Am I misquoting you when I say that?

5 A. Say that -- you are saying that I disagreed  
6 with someone spending time, life imprisonment?

7 Q. Instead of the death penalty.

8 A. I think that it's a case by case matter,  
9 warranted on the evidence, then that's the punishable crime.

10 Q. You consider a life sentence to be -- is a  
11 severe punishment in a death penalty case?

12 A. I would say that it would be.

13 Q. And you think or do you think that it would be  
14 appropriate in some cases, but probably not in all cases or  
15 how would you phrase that in a death penalty where the State  
16 is seeking the death penalty? Would you think that just  
17 because they seek the death penalty that the death penalty  
18 always has to be assessed?

19 A. No.

20 Q. Now, when talking about parties and  
21 accomplices, also, you indicated that maybe as long as they  
22 make a pact that no one was going to get hurt and somebody  
23 kills somebody on their own that that can be in your mind a  
24 circumstance where the death penalty wouldn't be warranted;  
25 is that correct?

1 A. That's what I said, yes.

2 Q. Would you always need that pact before --

3 A. No.

4 Q. So you would look at the case and --

5 A. Look at the whole case, the merits, because,  
6 obviously, that would just be one -- be one part of the  
7 evidence.

8 Q. So when we look over here at Special Issue No.  
9 3 where it says including the circumstances of the offense,  
10 that might be something that you would look at and say on  
11 how to answer that Special Issue how it happened, the  
12 evidence of the case, what level of participation the person  
13 took?

14 A. I think you would have to look at No. 3 in all  
15 cases.

16 Q. Would that be something that you would  
17 consider yourself?

18 A. What --

19 Q. The level of participation of the person in  
20 trial.

21 A. Yes. I think I said before it just depends on  
22 the nature and the circumstances.

23 Q. Now, at first it seemed when you sat down, you  
24 may not have been aware that this is one of the cases that's  
25 been titled the Texas Seven cases. Would that be right in

1 saying that?

2 A. Yes.

3 Q. And as we started talking, you realized that  
4 we were talking about one of those cases?

5 A. Yes.

6 Q. And I noticed in some of your answers you  
7 would say things that led me to believe that you already  
8 decided about how this all happened out there at the scene.  
9 I may be wrong, but have you -- you said something about  
10 they were all spread out in the store?

11 A. No. I was just citing that as an example.

12 Q. It wasn't something that you decided already  
13 happened in this case?

14 A. No.

15 Q. Now, we need twelve jurors on this case who  
16 haven't made up their mind as to what happened out there  
17 based on what they heard on the media or documentaries or  
18 newspaper articles or books that you have read. I mean, you  
19 know yourself better than I do. Is there some possibility  
20 that based on what you heard or have seen that you may have  
21 already made up your mind as to what happened in this case?

22 A. I don't think so. I mean, obviously, I'm not  
23 going to lie to you. I've seen the media coverage on TV. I  
24 have been exposed to what they've said happened. But I  
25 haven't really read in depth anything in books or newspaper

1 articles, just what I saw on the news.

2 Q. So the exposure you have had is the 5:00 news  
3 and in the newspapers?

4 A. The 10:00 news and the bold headline on the  
5 front page of the paper.

6 Q. Does that exposure in any way taint the way  
7 you think the facts are going to play out?

8 A. I don't think so. I'll be honest. I mean,  
9 other than what I've seen on the news, that's about all I  
10 know that happened on it. I never really followed that  
11 much.

12 Q. Originally you said that you would reserve the  
13 death penalty for the actor and the accomplice may not in  
14 your mind, may not be the person to put to death.  
15 Originally when the State asked you that question, that was  
16 basically your answer; is that right?

17 A. That's when I -- what I said.

18 Q. And then your answer changed a little bit?

19 A. No. I said -- I think I said that my answer  
20 changed, but it would be based on the circumstance.

21 Q. And it wouldn't --

22 A. -- of what happened.

23 Q. And I'm just curious if it at all had any  
24 effect that you found out later on in the question that that  
25 was one of the Texas Seven cases, how that would -- somebody

1 being an accomplice may receive the death penalty in your  
2 mind where before you weren't that sure?

3 A. No. I don't think I said before that. I said  
4 accomplices shouldn't be convicted on the death penalty. I  
5 think I said based on the circumstances, it would warrant an  
6 accomplice not being convicted. That's not what you thought  
7 I said. That was what I was meaning to say.

8 Q. That's why I was asking.

9 A. I believe accomplices, they could be held  
10 accountable and receive the death penalty. It would just be  
11 the circumstances.

12 Q. On Special Issue No. 2, one of the things that  
13 the jury is going to have to decide is whether the defendant  
14 actually caused the death of the deceased or not actually  
15 caused the death, but intended to kill the deceased or  
16 anticipated that a human life would be taken.

17 Now, I know the State kind of went over  
18 it, but you understand they have to prove Special Issue No.  
19 2 beyond a reasonable doubt to the jury before you could  
20 answer yes to that question? Knowing that you found the  
21 defendant guilty at this point of capital murder and knowing  
22 that you have answered yes to Special Issue No. 1, would you  
23 still require the State to prove that to you beyond a  
24 reasonable doubt that the person anticipated that a human  
25 life would be taken? In other words, would you require them



1 to convince you beyond a reasonable doubt or would you  
2 already just answer yes to that question because you already  
3 answered the other ones?

4 In the way it's said, I think that's a  
5 very confusing question. But, in other words, would you  
6 require the State to prove Special Issue No. 2 to you beyond  
7 a reasonable doubt, first of all?

8 A. Yes.

9 Q. Okay. And would you require circumstantial  
10 evidence or hard evidence? I mean, there was a question as  
11 to whether you needed an agreement by the co-conspirators in  
12 order to answer that. What would you really need in order  
13 to answer that question or have it proved to you beyond a  
14 reasonable doubt?

15 A. For Special Issue No. 2?

16 Q. Yes.

17 A. I mean, for me to tell you, I don't know if I  
18 could right now. I mean, I would have to sit on the jury  
19 and hear the whole case. I think you are asking me, like,  
20 anticipate what I hear to give you an answer. I really  
21 couldn't.

22 Q. But if you are on a jury, you know, found him,  
23 you know, guilty, obviously, you are finding him guilty on  
24 the evidence that was presented in the trial. Probably most  
25 of that evidence would be that Special Issue No. 2.

1                   And another thing that you are going to,  
2   if you are on this jury, that you are going to encounter is  
3   you are going to take an oath, that oath that you are going  
4   to have to follow the law that the Court gives you and the  
5   law that applies in this case.

6                   Sometimes people believe, well, you know,  
7   I'm on the jury and I'm going to do what I think is right  
8   regardless of what the law may say. In your questionnaire  
9   to the question, regardless of what the Judge says the law  
10   is, jurors should do what they believe is the right thing,  
11   and you had answered yes.

12                   I don't know if you recall answering that  
13   and you explained that by saying, "If I believe that  
14   something is right, I'm going to go with my instincts." I  
15   want to explore that a little bit and ask you, are you going  
16   to do what you think is right as a juror, regardless of what  
17   the law says in answering these Special Issues because you  
18   think that's the right thing to do and it may not have been  
19   proven beyond a reasonable doubt or are you going to follow  
20   the law and hold the State to the burden that they should be  
21   held to?

22           A.        Could you read that again? I don't remember.  
23   It's been so long.

24           Q.        It's been a while since you filled this out.  
25   Once of questions was, "Do you agree with the following

1 statement"? And the statement was, "Regardless of what the  
2 Judge says the law is, the jury should do what they believe  
3 is the right thing." And you wrote, you checked the box  
4 that said yes. And you explained it by saying, "If I  
5 believe strongly that something is right, I'm going to go  
6 with my instincts."

7 And I just want to explore what you meant  
8 by that.

9 A. And the question was about doing --

10 Q. Basically, was some people think that or  
11 regardless of what the Judge says the law is, in other  
12 words, whatever the law is, jurors should do what they  
13 believe is the right thing to do.

14 A. Okay. I must have misinterpreted that  
15 question. I mean, if I served on the jury and I took an  
16 oath, I would do everything based by the law and not my own  
17 personal, you know, feelings.

18 Q. So when you said that you would go with your  
19 instincts, would they be limited by the law, your instincts,  
20 or still do what your instincts told you to do?

21 A. No. I would obey what the law told me to do.  
22 I must have misread that. I mean, the way it looks, I don't  
23 know the way you are interpreting that question. It's like  
24 my mom got killed or something like that, if I just felt  
25 that he killed someone that I would just go with the death

1 penalty no matter what the Judge said. Is that how you are  
2 interpreting that?

3 Q. No. I didn't know how to interpret that.  
4 That's the reason I wanted to ask you to explain that.

5 A. I must have misinterpreted the question,  
6 because I wouldn't have just a personal vendetta. I mean,  
7 if the Judge said, you know, ignore that, I wouldn't say he  
8 said it. I'm going to stick to it. I wouldn't do that.

9 Q. Usually where that comes into play is holding  
10 the State to their burden. Your sole job as a juror is to  
11 decide whether the State has proven their case beyond a  
12 reasonable doubt and that's your sole job. I mean, it's not  
13 going to get into, you know, moral questions and things like  
14 that. You are just judging their case. And sometimes  
15 people think, well, you know, I need to do the right thing,  
16 even though I'm not convinced beyond a reasonable doubt.  
17 I'm still going to do what I think is right. And by you  
18 doing that, you are lessening the burden on the State. And  
19 you are going to take an oath that you would hold them to  
20 it. You understand what I'm saying?

21 A. I understand what you are saying.

22 Q. That's why I'm asking that question.

23 A. Okay.

24 Q. Now that I have explained it that way, would  
25 you be more concerned about doing what you thought was right

1 --

2 A. No. I would be more concerned with how the  
3 evidence was presented.

4 Q. And then after it was presented, would you  
5 still hold the State to their burden and make them prove  
6 their case beyond a reasonable doubt?

7 A. Yes.

8 Q. And make them prove those Special Issues?

9 A. Yes.

10 MR. SANCHEZ: I have nothing further,  
11 Your Honor.

12 THE COURT: Mr. Richards, if you would,  
13 please, sir, give us a few minutes and wait for us outside  
14 and we'll have you back and let you know the final decision.

15 [Prospective juror out]

16 THE COURT: What says the State?

17 MR. SHOOK: We have no challenges for  
18 cause, Judge.

19 THE COURT: Defense?

20 MS. BUSBEE: We challenge the juror for  
21 cause. I think it's clear that he has predetermined the  
22 facts in this case and I would like to outline to the Court  
23 some of the things that happened this afternoon that exhibit  
24 that.

25 First of all, he had a strong opinion as

1 to whether or not an accomplice was death worthy and that  
2 was the opinion that he was not. And if he were to write  
3 such a law, he would not include those persons to those that  
4 were subject to the death penalty. Upon learning that this  
5 case as one of the Texas Seven, there was a change in his  
6 person. He flipfopped on that after learning of the Texas  
7 Seven.

8 He also told the Court under oath when he  
9 filled out his questionnaire that he had seen the  
10 documentaries or shows about the Texas Seven. He told us  
11 that before he knew this was a Texas Seven, after he found  
12 out it was a Texas Seven case, he backpedaled and denied  
13 that he had seen any shows, other than the news reports.

14 Furthermore, the questionnaire on page 9  
15 asked the question very specifically as the Court is well  
16 aware, do you agree with the following statement, regardless  
17 of what a Judge said the law is, the juror should do what  
18 they believe is right and he checked yes. And I don't think  
19 that there's any question that he understood what he was  
20 being asked, because his answer is, if I believe strongly  
21 that something is right, I'm going to go with my instincts,  
22 indicating that his moral code of conduct would be stronger  
23 than the Court's instructions.

24 Throughout his voir dire he has -- we see  
25 a complete turn around from the time he learned part of the

1 -- prior to the time he learned the nature of this case, and  
2 subsequent and some of his answers reflect a knowledge of  
3 the facts of this case that he has denied under oath.

4 And I think it's clear from the totality  
5 of his questionnaire and his interview here today that he  
6 has formed an opinion and that he does have a bias and I  
7 would ask the Court to grant my challenge for cause on juror  
8 No. 499, Mr. Richards.

9 MR. SHOOK: In response, Judge, I think  
10 when we were talking about what he had seen on the Texas  
11 Seven, he said that he had seen news reports and I might  
12 have misread what he said about the documentaries. I think  
13 that was just on the others. I don't think that he was  
14 trying to say he saw those documentaries. But regardless of  
15 that, threw "under the law" out there about could you put it  
16 aside and decide the case on the facts, he was clear on his  
17 answers.

18 So I don't think that he was disqualified  
19 on publicity. And I think he's qualified under the law in  
20 all other areas.

21 THE COURT: Court finds that when  
22 Mr. Richards was explaining the law and had an opportunity  
23 to explain his answers he provided on the questionnaire, on  
24 further reflection he had acknowledged to the Court that he  
25 understands the law. The Court finds this juror to be

1 qualified.

2 Would you like a minute to step in your  
3 office?

4 (Recess)

5 THE COURT: What says the State?

6 MR. SHOOK: State accepts the juror.

7 MS. BUSBEE: Defense will exercise a  
8 strike.

9 THE COURT: Ask Mr. Richards to come back  
10 in.

11 [Prospective juror in]

12 THE COURT: Mr. Richards, thank you for  
13 your service and time to this Court. And I know at this  
14 point you will be disappointed, but you are not going to be  
15 sitting on this case. It's one of those things that people  
16 don't want to serve on the jury, but you go through the  
17 process. You kind of do. So I thank you again for the  
18 parties, but you will not serve as a juror on this case.

19 [Prospective juror out]

20 THE COURT: Mr. Hamman.

21 [Prospective juror in]

22 THE COURT: Good afternoon, sir. How are  
23 you?

24 PROSPECTIVE JUROR: Good.

25 THE COURT: Your name is Glenn Scott



1 Hamman?

2 PROSPECTIVE JUROR: Hamman.

3 THE COURT: Sorry for the wait. We don't  
4 know if we'll speak to someone for ten minutes, an hour, or  
5 two hours, so we have three people in the afternoon and  
6 whoever gets here first goes first. So I appreciate your  
7 patience with us, but it's one of those things with  
8 scheduling. I have to make one person wait or ten people  
9 wait.

10 I appreciate you coming down. Obviously,  
11 you had time to review the guide that I provided for you.  
12 It's a lot of law to be given to someone and we don't expect  
13 you to understand it from front to back. The lawyers will  
14 speak to you on certain issues of the law. My job is to be  
15 sure that you understand the law and then can you follow it?

16 Only thing the lawyers are interested in  
17 is your truthful opinions and there are no wrong answers.  
18 So this is the only time that you get to interact with the  
19 lawyers and the Court on a case like this. Some people  
20 think it's somewhat intimidating because you are the focus  
21 of attention. Sometimes people think they are on trial and  
22 they are not. It's just the only way that we can really  
23 have a good opportunity to visit with you and be sure you  
24 understand what is involved in this case.

25 Only question I have for you, the trial

1 date for this case shall begin on November 10th. Will you  
2 have any problems serving the Court with those two weeks?

3 PROSPECTIVE JUROR: I don't believe so.  
4 I don't know of anything right now.

5 THE COURT: Very well. With that,  
6 Mr. Wirskye?

7 GLENN HAMMAN,  
8 having been duly sworn, was examined and testified as  
9 follows:

10 DIRECT EXAMINATION

11 BY MR. WIRSKYE:

12 Q. Mr. Hamman, how are you?

13 A. Good.

14 Q. My name is Bill Wirskye. I'm the Assistant DA  
15 who will have a chance to visit with you for the next few  
16 minutes. And what I would like to do is touch on some of  
17 the information in your questionnaire and talk a little bit  
18 about your thoughts on the death penalty and capital  
19 punishment and talk a little bit about the laws that apply,  
20 if you are selected to be a juror in this case.

21 Going through your questionnaire, on the  
22 very last page we asked your thoughts about what you thought  
23 about being chosen as a juror in this case. I think you  
24 said you were a little bit uneasy?

25 A. Yes.

1 Q. What did you mean by that?

2 A. Well, what was the exact question on that?

3 Q. I know it's unfair. You filled it out in May.

4 A. It's hard to remember.

5 Q. We're all sitting here looking at it and you  
6 haven't thought about it. How would you feel about being  
7 chosen as a juror in this case? And your answer was  
8 "uneasy."

9 A. I guess being -- it seems like I remember that  
10 I guess it was some mention of the case in there as to what  
11 it was or -- and I just kind of -- I guess I, being on a  
12 death penalty case, I never have sat on one of those before,  
13 so --

14 Q. Yes.

15 A. So I would be a little bit uneasy on doing  
16 something like that.

17 Q. Particularly, just being on a different type  
18 of case or death penalty case in particular?

19 A. Yeah, probably just the death penalty-type  
20 case.

21 Q. You have been a juror before on just a regular  
22 straight murder case; is that right?

23 A. Right.

24 Q. How long ago was that?

25 A. Oh, that was probably -- seems like at least a

1 couple of years ago.

2 Q. Okay.

3 A. I can't remember the exact date on that.

4 Q. Late '90's or --

5 A. Yeah, maybe two or three years ago, somewhere  
6 around in there.

7 Q. Okay. Was it down in this building?

8 A. Yes.

9 Q. Okay. What do you remember about that case,  
10 the facts or --

11 A. It was a case that was in -- Lancaster High  
12 School kids like at a party and I think some people from  
13 Ferris had come down and kind of busted up that party and I  
14 guess there was probably some drinking and marijuana and  
15 things like that being used. And the guy was surrounded by  
16 some people and I think a fight broke out and he had a gun  
17 with him and he started shooting, hit somebody, killed them.

18 Q. Based on what you recall, was the evidence  
19 pretty straightforward?

20 A. Yeah, it was fairly confusing, because there  
21 was some people involved as witnesses, I mean, they had, I  
22 think, about of a murder it's probably somebody is going to  
23 do something like that, that they would like to not have any  
24 witnesses around, but in this case here it was a party, so  
25 there were probably 50 witnesses. So everybody had a

1 different story and it was kind of hard to put everything  
2 together on something like that.

3 Q. Looks like y'all ended up finding the person  
4 charged guilty of murder?

5 A. Yeah.

6 Q. And I think 75 years, was that the sentence?

7 A. Right.

8 Q. Did you hear any additional evidence in the  
9 punishment or the second part of the trial?

10 A. Um --

11 Q. That you remember?

12 A. I don't recall. I don't recall that right  
13 offhand.

14 Q. Okay. And you told us, I guess, generally,  
15 you are in favor of having the death penalty available as a  
16 punishment in some cases. And I guess the case you served  
17 on was just, again, what we call a straight murder case or  
18 regular murder case.

19 A. Right.

20 Q. You know, in Texas you may or may not be aware  
21 that only a certain subset of murder cases qualify to  
22 actually be prosecuted as capital murders, actually qualify,  
23 where the State can come in and seek death. Just in your  
24 own words, what do you think? Why do you think we should  
25 have the death penalty available in our society as a

1 punishment? What value do you think it serves?

2 A. Um, I guess that if you didn't have the death  
3 penalty, then I feel it would probably be a little easier  
4 for people to kill someone and, you know, it's somewhat of a  
5 deterrent. Somebody really wants to kill somebody, I don't  
6 think anything would stop them doing that.

7 Q. Sure.

8 A. Whether it's short of the death penalty or  
9 not. But I think you have to have that because there is a  
10 gray line there where somebody might not commit a murder.  
11 They might think twice about it instead of doing it, if they  
12 know they might die for it, so --

13 Q. In Texas, generally, I think you can think of  
14 capital murder as an intentional killing or intentional  
15 murder plus something else.

16 A. Uh-huh.

17 Q. You shoot and kill a police officer, murder a  
18 police officer in the course of their duty, a fireman, a  
19 child under six, or if you commit a murder in the course of  
20 committing another felony like robbery or burglary or rape,  
21 that type of thing. Those type cases are the only ones that  
22 would be eligible for the death penalty. And I can pull out  
23 a gun right now and shoot Mr. Shook because I don't like his  
24 tie ten times in the head in the courtroom in front of  
25 everybody and that would not be eligible for the death

1 penalty.

2 What do you think about that? I mean, if  
3 you were king of Texas or Governor for a day, would you kind  
4 of expand the list of eligible cases or are you happy where  
5 it is or shrink it or --

6 A. Yeah, I mean, something like that, I guess, if  
7 it's an outright murder, something like you just got through  
8 describing, then I would warrant that being worth the death  
9 penalty on something like that, I mean. If you kill -- if  
10 you kill somebody and you intentionally do that, then I  
11 think it's warranted for the death penalty.

12 Q. Okay. So I guess just any intentional murder,  
13 premeditated or bad facts, that type of thing?

14 A. Yes.

15 Q. But you realize the law that we have now, the  
16 Legislature has given us, it's a more limited or narrow set  
17 of facts?

18 A. Uh-huh.

19 Q. Do you know the murder case that you sat on,  
20 was there only one person charged in that crime? Do you  
21 remember more than one person with a gun or --

22 A. Let's see. I think it was -- I think it was  
23 just one person --

24 Q. Okay.

25 A. -- that was charged, because I believe -- I

1 think he's the one that had the gun.

2 Q. Okay. The reason I asked that is oftentimes,  
3 especially in a situation like this where we're talking  
4 about a capital murder case, I think most people tend to  
5 think off the top of their head about the one guy going in a  
6 7-Eleven, maybe, and shooting and killing the clerk during  
7 the course of a robbery. But as you probably know and can  
8 imagine, oftentimes crimes are committed by groups or gangs  
9 of people and sometimes you have only got, I guess, one  
10 person pulling the trigger, but you have other people  
11 involved in the crime.

12 And the law in Texas actually allows us  
13 to prosecute those nontriggermen for capital murder, the  
14 people that were active participants, but didn't actually  
15 pull the trigger and depending on the circumstances, the  
16 nontriggermen would actually receive the death penalty.

17 And I'm going to ask you how you feel  
18 with that. Because we talk to a lot of people and some  
19 people, you know, would completely take the death penalty  
20 off the table as an option for somebody that doesn't pull  
21 the trigger. I wonder what your thoughts are in that type  
22 scenario?

23 A. Well, I think if -- if you are -- if you are  
24 in a group that something like that happened and you don't  
25 know who actually did it and you're part of that group and



1 you made a choice to be part of that group, then you would  
2 have to be -- have the death penalty, you know. Whether or  
3 not you were the shooter, who would really know? And, you  
4 know, they could be pushed back and forth between that group  
5 and the pointing could start and say, I didn't do it, he did  
6 it. And that kind of stuff like that. Well, you made a bad  
7 choice of being with that group and have something like that  
8 happen, so I think that group ends up being one in a case  
9 like that.

10 Q. Acting as one?

11 A. Acting as one.

12 Q. We get that a lot, acting in concert. So you  
13 wouldn't necessarily take the option of a death penalty off  
14 the table for someone who didn't pull the trigger; is that  
15 right?

16 A. That's right.

17 Q. I'll give you a quick example. Say, Mr. Shook  
18 and I decide we'll get together and rob a bank. And, you  
19 know, he's got the gun and we know each other. I know how  
20 mean he is and may have been to prison before. And we go in  
21 to do the bank robbery. He's got the gun. He's holding it  
22 on the teller. And I come in and I'm collecting the money.

23 And at some point something goes wrong  
24 and he shoots and kills that teller and, obviously, he's the  
25 triggerman. He could be prosecuted for capital murder and

1 ultimately, depending on what happens at the trial, receive  
2 the death penalty. But depending on my exact role in the  
3 offense, maybe whether I had a gun or how actively I was  
4 involved, that type of thing, I could also be found guilty  
5 of capital murder and ultimately receive the death penalty.  
6 What do you think about that type of scenario?

7 A. Well, I think in a case like that, that it's,  
8 you know, you are part of that group and, you know, it's  
9 unfortunate that something like that might happen, but you  
10 still had a choice and you are going in there with an intent  
11 to commit some kind of a crime. And in your instance there,  
12 talking about a bank robbery, well, there could be somebody  
13 else in there with a gun that might try to stop the robbery  
14 or something like that. And before you go in you probably  
15 know that somehow that there -- somebody could get hurt.  
16 And so, there again, you made a bad choice of going in that  
17 bank, trying to rob it.

18 Q. And we talk to a lot of people and they tell  
19 us that sometimes if we had gotten together and said, hey,  
20 no matter what happens, we're going to do what we need to do  
21 to get out of here.

22 A. Yeah.

23 Q. We are not going to leave any witnesses, that  
24 type thing. That sounds like the type stuff that might be  
25 important to you in deciding whether I should ultimately

1 receive the death penalty; is that right?

2 A. Right.

3 Q. Let me ask you this. You know, again, we talk  
4 to a lot of people down here. We realize this isn't  
5 everyone's cup of tea when you are talking about a capital  
6 murder case where you know actually somebody could get the  
7 death penalty, a person you are in the same room with like  
8 Mr. Murphy, sits here today, a life, breathing person.

9 And we talk to a lot of people who, I  
10 guess, philosophically or in the abstract are in favor of  
11 the death penalty. But, you know, probably be coming fast,  
12 it's one thing to be philosophically for it and be for it in  
13 the abstract and it may be another thing for some people to  
14 actually participate in it. And neither side is here to  
15 force someone into something one way or the other if they  
16 are not completely comfortable with it. We don't want to  
17 make anybody do anything to violate their conscience.

18 And, you know, I just want to make sure  
19 before we start and go any further that you feel that you  
20 are the type person that could make those decisions in a  
21 capital murder case and, for lack of a better word, are  
22 comfortable in participating in a trial like this. How do  
23 you feel about that?

24 A. Well, as I stated on my last question there, I  
25 wouldn't really feel, you know, that comfortable doing

1 something like that. It's not an everyday occurrence for me  
2 to do something like that. But, I know how society is  
3 supposed to work and if that ends up being the case where  
4 somebody has broken the rules and that it leads to the  
5 highest type punishment, then, you know, it's something that  
6 I would have to do. But although I might not feel that good  
7 about doing something like that, but, you know, I guess I  
8 could probably do that.

9 Q. Okay. You know, in Texas we don't ask a jury  
10 to kind of make -- we don't give them one question and say  
11 should the defendant get the death penalty or should he get  
12 a life sentence? What we ask them to do, and you probably  
13 read it in the handout, is -- the questions are up on the  
14 wall -- to answer a series of questions. And we let the  
15 answers to those questions determine the appropriate  
16 sentence. If the questions are answered yes, he's a future  
17 danger; yes, he caused the death or anticipated the death;  
18 and, no, there's nothing mitigating about the crime or his  
19 background or character, then under that situation the Judge  
20 would have no discretion and the death sentence would be  
21 imposed.

22 So I just want to make sure that you are  
23 comfortable, you are the type of person that could take pen  
24 in hand and answer those questions such that you know it may  
25 result in the death of a human being. Again, I know it's

1 not easy or comfortable for anyone, but I want to make sure  
2 you are the person that can answer those type questions.

3 A. Yeah, that --

4 Q. We're going to talk about the questions a  
5 little more in detail, but I want to make sure that you are  
6 okay before we go any further.

7 A. Yeah, yeah, I think I could do that.

8 Q. Okay. Fair enough. And as you may remember  
9 from your trial, trials in Texas are divided into two parts.  
10 The first part of the trial is, basically, the  
11 guilt/innocence part where it's just mainly focused on the  
12 facts of the trial. It would be up to a jury to decide  
13 whether the person is guilty of capital murder or not. You  
14 know, did the State prove their case beyond a reasonable  
15 doubt?

16 And if the person is found guilty, then  
17 you move into that second phase of the trial, which would be  
18 the punishment phase. The rules of evidence would be a  
19 little bit broader. You would get to hear different  
20 information, good things about his past, bad things about  
21 his past, if they are -- their prior criminal history, that  
22 type of thing. We try to bring you a little bit more  
23 information so you can answer these questions and make that  
24 decision and that's, basically, how the trial works at that  
25 point. Does that kind of make sense to you?

1 A. Uh-huh.

2 Q. That's our law in Texas. And, you know, we  
3 just want to make sure you are the type of person that feels  
4 they can live with that and follow the law that the Judge  
5 gave you; is that right?

6 A. Yes.

7 Q. All right. Let's look at Special Issue No. 1  
8 up here on the board. They are called Special Issues. I  
9 like to call them questions. Question No. 1. And realize  
10 before we even answer these questions, you would have found  
11 the person guilty of capital murder. Okay?

12 A. Okay.

13 Q. And then we go in --

14 A. This is the punishment.

15 Q. -- the second phase, the punishment phase,  
16 that is assuming that you found him guilty.

17 Basically what the law is, is, you know,  
18 nothing that you do in that first part of the trial, the  
19 guilt phase, automatically answers any of the questions in  
20 the second phase. The law requires the jury, a juror, to  
21 start in the second phase with an open mind and look at the  
22 evidence again and answer these questions in good  
23 conscience. Does that make sense to you?

24 A. Yes.

25 Q. Okay. No -- none of these questions are

1 answered automatically.

2 A. Uh-huh.

3 Q. Things like that, the first question,  
4 basically, asks whether there's a probability that the  
5 defendant would commit acts of violence that would  
6 constitute a continuing threat to society. Basically, is he  
7 going to be a future danger? That type of thing.

8 Do you see kind of how that question asks  
9 you to make a prediction about future behavior?

10 A. Yes.

11 Q. Okay. Is that something that you feel like  
12 you would be comfortable with, looking at the type of crime  
13 and maybe looking at his background and making somewhat of a  
14 prediction about future behavior?

15 A. Yeah. I think, you know, after hearing enough  
16 evidence and I guess he would end up having some  
17 psychologists and things like that in there and kind of  
18 getting the case history of somebody is kind of profiling  
19 somebody, I could make a decision based on that information.

20 Q. Okay. That's the type of evidence that would  
21 be important to you?

22 A. Uh-huh.

23 Q. Okay. You know, that question is pretty  
24 straightforward, unlike a lot of things we do. Do you know  
25 here when you see that word "probability", what does that

1 mean to you?

2 A. That there's a pretty good chance of something  
3 being positive and there's always that other chance of  
4 something being on the negative. But I think of a  
5 probability of being on the higher side of something.

6 Q. Okay. Basically what it is, certainly doesn't  
7 have a certainty or high probability. Maybe more likely  
8 than not. Does that make sense to you?

9 A. Yeah. I mean, if you had the word "high" in  
10 there, then it would mean one thing. But just the word  
11 "probability" is a little lower scale than the higher  
12 probability, the way I look at it.

13 Q. And then it talks about commit criminal acts  
14 of violence just as you read that "criminal acts of  
15 violence", I'm curious how you would interpret that.

16 A. Well, I would say any kind of -- as we talked  
17 about earlier, like robbing a bank or any kind of robbery or  
18 bodily harm to someone else or something like that.

19 Q. What about threats? That type of thing?

20 A. Yeah, that would kind of be on a little bit  
21 lower scale, but threats, I think that would be probably one  
22 of the things I read in there where somebody threatens  
23 somebody's life and it's -- I can't remember if that was --  
24 would be part of aggravated --

25 Q. Robbery?



1           A.       -- robbery or something like that with a  
2       threat, with some kind of bodily injury whether it's with a  
3       weapon or not. But --

4           Q.       Sure.

5           A.       But bodily injury threat.

6           Q.       I wanted to make sure that you understand the  
7       law doesn't require us to prove that another murder is going  
8       to be committed or aggravated robbery or rape. It's just  
9       any act that you would consider a criminal act of violence.  
10      Does that make sense to you?

11          A.       Yes.

12          Q.       And finally the question talks about that very  
13      last word "society." Constitute that continuing threat to  
14      society. And I'm just curious how you would define  
15      "society" when you think about that word.

16          A.       Um, I guess society is -- it's pretty general.  
17      It's kind of -- I think of society as just the entire  
18      population of people.

19          Q.       That's pretty much what people tell us.  
20      Anyone that he might come into contact with, is that kind of  
21      what I'm hearing you say?

22          A.       Yes.

23          Q.       Okay. If it's out here in the free world with  
24      us or behind bars. Does that make sense to you?

25          A.       Yes.

1 Q. Other prisoners, guards, that type of thing?

2 A. Uh-huh.

3 Q. Okay. One thing to remember about these  
4 questions, question 1 and question 2 are alike in the sense  
5 that we have the burden of proof. We have to prove it to  
6 you as a juror beyond a reasonable doubt that the answer  
7 should be yes. Kind of a default setting on those first two  
8 questions is no and it's up to us to prove to you beyond a  
9 reasonable doubt that the answer should be yes. Does that  
10 make sense to you?

11 A. Yes.

12 Q. You had mentioned, you know, that you think  
13 maybe some psychiatrists or psychologists, that type of  
14 thing, may be helpful for you in answering No. 1?

15 A. Yes.

16 Q. What -- explain that to me again.

17 A. Well, if we wanted to talk about backgrounds,  
18 you know, if you were saying that we would have more  
19 information on that punishment phase and find out if  
20 somebody had a kind of a record in the past or their past  
21 history, character witnesses coming up and talking about  
22 what had happened in the past, and I assume that probably at  
23 some point in the trial there would be some kind of  
24 psychologist or psychiatric-type evaluation based in there.  
25 So based on things like that, then you would know a little

1 more about that person to be able to make an educated --

2 Q. Decision?

3 A. Pardon?

4 Q. Make an educated decision?

5 A. Yes, that's --

6 Q. Is that something that you feel like you would  
7 want to hear from a psychiatrist or psychologist to answer  
8 that?

9 A. It wouldn't have to be, just be from other  
10 people, other people that maybe he has worked with and been  
11 associated with for years and high school friends or things  
12 like that. It doesn't have to just be from a professional  
13 person. But I would like to take everything there and put  
14 it all together and try to sum up my own opinion based on  
15 that information.

16 Q. You wouldn't necessarily require that either  
17 side bring you a psychiatrist or psychologist?

18 A. No. If there's not one present, it's just  
19 character-type witnesses, then that might end up being  
20 enough.

21 Q. Let's move on to question No. 2. This is  
22 whether the defendant actually caused the death, whether  
23 he's the triggerman. Of course, if he's the triggerman,  
24 that question is pretty easy. Or if he didn't actually  
25 cause the death of the person, if he intended to kill the

1 person, like a hitman or murder for hire, or he anticipated  
2 that a human life would be taken. This is the question that  
3 kind of covers that nontriggerman scenario.

4 And I want to be honest with you and lay  
5 all our cards out on the table. This is a case where we're  
6 prosecuting Mr. Murphy under that theory of accomplice, the  
7 nontriggerman, and that's the theory we're proceeding under  
8 in this case. And, again, I want to make sure that you are  
9 comfortable sitting on a case where the State is seeking the  
10 death penalty for an accomplice or a nontriggerman.

11 A. Uh-huh. Yeah, like I said before, if you know  
12 -- if you are part of a group and something like that  
13 happens, then it's unfortunate that you are part of that  
14 group, but I guess the answer is yes to your question on  
15 that.

16 Q. Okay. Kind of going back to our example of me  
17 and Mr. Shook, you know, if he goes in with that gun and I  
18 say, hey, the teller is trying to get away, shoot her.  
19 Obviously, I'm not the triggerman. But I certainly had been  
20 an active participant and I could be found guilty of capital  
21 murder. Or if I just should have anticipated that a life  
22 may be taken, because I know he's mean, I know he has a  
23 loaded gun, that type of thing.

24 A. Uh-huh.

25 Q. Then I could be convicted of capital murder.

1 In order to receive the death penalty in Special Issue No.  
2 2, the bar is raised just a little bit from the standard of  
3 should have anticipated to actually did anticipate. They  
4 would have to prove or the State is going to have to prove  
5 in my case that I actually anticipated a life would be  
6 taken, that type of thing. Does that make sense to you?

7 A. Yes.

8 Q. And, again, question No. 1, that starts off  
9 with a default setting of no and it's the burden of proof on  
10 the State for us to prove to the jury beyond a reasonable  
11 doubt that the answer to that question should be yes. Does  
12 that make sense to you?

13 A. Yes.

14 Q. Okay. Let's talk about Special Issue No. 3.  
15 That's a little bit different from the first questions, but  
16 neither side has the burden of proof. In that question --  
17 okay, it's just up to you as the jury to answer that and  
18 that's basically, I guess, a safety net or a safety valve.  
19 That's kind of the last stop in the process, kind of ask a  
20 juror to step back, take a deep breath, and looking at  
21 everything they have seen and see if there's anything there  
22 that is mitigating, anything that would lessen his personal  
23 moral blameworthiness. And if there is something like that,  
24 is it sufficient that his life should be spared? Does that  
25 make sense to you?

1           A.       Yes.

2           Q.       Okay. We talked to a lot of people and, you  
3 know, realize before we even get to Special Issue No. 3, you  
4 found the person guilty of capital murder. You have decided  
5 they are going to be a future danger to society. You have  
6 decided they either pulled the trigger or they anticipated a  
7 life would be taken. You know, you decide all that before  
8 you get to Special Issue No. 3.

9                   Some people tell us, you know, very  
10 frankly, by the time I've gotten that far in the process, my  
11 mind is closed. I don't care what the law is, you know,  
12 there's just not going to be anything mitigating. My mind  
13 is closed to it.

14                   So I want to make sure that you kind of  
15 understand about that last stop in the process and that you  
16 can tell us truthfully that actually if you got to Special  
17 Issue No. 3, that your mind would be open to that. What do  
18 you think about that?

19           A.       Um, you know, I guess the way I see that is  
20 just, you know, maybe a back door to get out. But like you  
21 were saying, if the first there -- if you go through the  
22 question 1 and 2, it seems to me the way those questions are  
23 set up there is that you have pretty much made up your mind  
24 at that point in time that someone like that would be a  
25 menace to society and that they did act with an intent to do

1 some kind of a crime there.

2 So I think that at that stage there, I  
3 don't know -- I mean, I don't know if that No. 3 would apply  
4 to the way I'm thinking on something like that.

5 Q. Uh-huh. What the law, basically, says is the  
6 law doesn't necessarily tell you what is mitigating. You  
7 can think something is mitigating and another juror would  
8 think it's not mitigating, it's aggravating. All you need  
9 to tell us in order to be a qualified juror is, hey, going  
10 into Special Issue No. 3, even though I have made these  
11 other decisions, I can still keep an open mind. And if  
12 there's something there that I consider sufficiently  
13 mitigating, I can keep an open mind and deny imposing the  
14 death penalty and give a life sentence. Does that make  
15 sense to you?

16 A. Yes.

17 Q. That's the law. Is that something that you  
18 think you would be able to follow?

19 A. Um, yeah, I guess I could -- it would probably  
20 have to be something -- something big come up if I've  
21 already made that decision based on those top two.

22 Q. I know it's not something you sit around  
23 thinking about.

24 A. I mean, it would have to be something big that  
25 would really sway my mind to change my thought process from

1 that to do that. I know some people might end up needing  
2 that back door to get out because they might end up thinking  
3 what have I gotten myself into or something like that. I  
4 don't really want to do this. That's the back door to do  
5 that.

6 But I think for me that once I got  
7 through the 1 and the 2, trying to keep up with the way the  
8 laws are stated and the way your questions are stated, that  
9 I don't -- it would just have to be something big to change  
10 my mind.

11 Q. We always ask people and no one sits around  
12 thinking about this stuff and I hope you don't, unless you  
13 are a lawyer like us. But we ask a lot of people, you know,  
14 anything off the top of your head that you would consider  
15 mitigating and almost to a person no one can come up with  
16 anything. So it's not unusual and we can't require you to  
17 come up with things. Sometimes people say, well, if the  
18 person was real young, that might be mitigating. Other  
19 people would say, no, you are old enough to know right from  
20 wrong.

21 Some people may tell us, you know, if  
22 they were abused or had a bad childhood, that may be  
23 mitigating. Other people would say, again, life is choices  
24 and you can overcome a bad upbringing. So we don't require  
25 you to make a decision one way or tell us today what you



1 would consider mitigating. We just need for you to be able  
2 to tell us you can keep an open mind.

3                   You know, basically what it boils down to  
4 is this is the final check, the final safety valve, the  
5 final stop, in the process. And can you honestly tell us  
6 that you could keep an open mind and that you actually see  
7 value to having, you know, that Special Issue No. 3 and, you  
8 know, your mind isn't closed by the time you get there?

9           A.       Uh-huh. Yeah, I guess I could keep an open  
10 mind in doing that, if that's, you know, it would be -- it  
11 would be pretty small at that stage, but I guess like a  
12 one-percent-type open mind there once I got to that stage of  
13 it after answering these other questions and finding  
14 somebody guilty of that.

15           Q.       You know, like I said, we talk to people that  
16 say, no, Mr. Wirskey, my mind is just closed. That question  
17 has no meaning for me, has no value. I don't see the  
18 purpose, utility, in it. But I want to make sure you see  
19 the value in it and that you can tell us you could keep an  
20 open mind. You don't know what it is. You know, you may  
21 listen to 99 or 100 death penalty cases and never hear  
22 something that is mitigating. As long as you can keep that  
23 open mind, go into it and see some value in it, you would be  
24 a qualified juror and you will be able to follow the law.  
25 Do you think that's something that you can do?

1           A.       Like I said, it's a one at that stage of the  
2 game right there. It's a one-percent-type open mind.  
3 There's --

4           Q.       What a lot of people tell us is, it's been in  
5 the news a little bit, mental retardation. You know, if I  
6 heard evidence that somebody is severely or mentally  
7 retarded, to me that might be mitigating. That type of  
8 thing.

9           A.       Uh-huh.

10          Q.       And a lot of people tell us that that's been  
11 on the news a lot lately in capital punishment and stuff.  
12 Do you think that you could keep that open mind?

13          A.       I guess in a situation like that, I don't know  
14 if it would, the way I feel about murder. No matter who  
15 does it, you know, somebody is taking another life and it  
16 might be hard for me to change my mind at that stage of the  
17 game.

18          Q.       Okay.

19          A.       I mean, if my mind was going to change, it  
20 might be somewhere in the trial process that would affect  
21 the 1 and the 2. But once I've got to that stage of the  
22 game, it would be kind of hard for me to change my mind.

23          Q.       We kind of touched on this earlier. That's  
24 kind of the scheme that we have that the Legislature has  
25 given us. You don't make a choice between the death penalty

1 and life. We ask you to use your, I guess, mental  
2 discipline and work the process that we have if you find him  
3 guilty of capital murder, find that doesn't automatically  
4 answer -- you know, because you found him guilty, doesn't  
5 answer No. 1 automatically, doesn't answer No. 2  
6 automatically. By the same token, because you found him  
7 guilty and maybe answer No. 1 yes and No. 2 yes, it doesn't  
8 automatically answer No. 3 for you no?

9 A. Uh-huh.

10 Q. I mean, that's what we're looking for. Can  
11 you really use that mental discipline? You don't have to  
12 think of an example right now. You just have to tell us you  
13 have an open mind and you can follow the law and that you at  
14 least see some value in having that question. You know, I  
15 don't know what it would be. We can't predict those things.  
16 But, you know, it's kind of --

17 A. I can see having that third question as a  
18 value for certain people because everybody has different  
19 thoughts and everybody works through life in different  
20 manners. So I can see having that third question available  
21 for people.

22 Q. Okay.

23 A. It's just that third question is a small  
24 percentage for me at that stage of the game.

25 Q. That's fair enough as long as you tell us you

1 have an open mind.

2 A. Okay.

3 Q. You can follow the law in that respect?

4 A. Yes.

5 Q. I'll stop beating a dead horse. Are you ready  
6 to move along?

7 A. Yes.

8 Q. But the point is each one of those questions  
9 you look at independently. Nothing is automatic. You make  
10 a fresh, independent inquiry to each question. You can use  
11 everything that you heard to help you answer it. You just  
12 can't answer these things automatically. Does that make  
13 sense to you?

14 A. Yes.

15 Q. And that seems like the law and you can follow  
16 it and that type of thing?

17 A. Yes.

18 Q. Okay. Let's talk a little bit about, you  
19 know, you have been on a murder trial before, but some of  
20 the different types of witnesses that you may hear. You  
21 touched on it yourself earlier. Oftentimes in these types  
22 of cases, death penalty cases, either side would call  
23 psychiatrists, may call a psychologist to testify.

24 Just generally, how do you feel about  
25 that? Would you -- you know, a lot of people think that,

1 you know, they are very valuable. Some people have no value  
2 to them. Some people are kind of in the middle and say, you  
3 know, gee, I'll just have to listen and see what they have  
4 to say. Where do you kind of put yourself?

5 A. Well, I would probably put myself in the  
6 middle on that. Just because somebody is, say, has --  
7 that's their profession in doing that, I wouldn't -- I  
8 wouldn't just totally, you know, be in awe of them and  
9 whatever they said would make me change my mind on  
10 something. It depends on the entire case.

11 So they are just part of that case and  
12 just leading to one more piece of evidence to go on. So  
13 that's why I put myself in the middle.

14 Q. That's what the law says. You start over with  
15 each witness out on the same level, psychiatrist or  
16 psychologist or police officer, you can't give a police  
17 officer an automatic leg up because they are wearing a badge  
18 and a gun. Obviously, there is a case where we allege a  
19 police officer has been killed. You have some tie to law  
20 enforcement. You said your sister works in the FBI?

21 A. Yes.

22 Q. Who does she work for or what division?

23 A. I'm not sure who she actually works for, but  
24 they are in the Dallas Division. They were downtown. I  
25 think they moved to that office out on Northwest Highway.

1 Q. The new big office building?

2 A. Yeah.

3 Q. Anything about having somebody close to you  
4 that works for the FBI make it difficult for you to be  
5 completely fair and impartial in this case?

6 A. Um, I guess I've got a nephew that's going  
7 through the police academy now, so -- and that's in Garland,  
8 Garland Police Academy. And so my sister, she actually is  
9 on the staff there. She's not an agent out in the field.

10 Q. Anything about that that would make it  
11 difficult for you to be completely fair to our side or Mr.  
12 Murphy?

13 A. Um, I guess I would, having people on the  
14 police force and the -- I would probably, I guess if I had  
15 to sway to one side or the other, I would probably be swayed  
16 more towards the police side of it.

17 Q. Would you be able to follow the law and start  
18 the police witness on that same level?

19 A. Yeah, I think I could probably do that.

20 Q. Okay. And the other bottom line question, I  
21 guess, regardless of your ties to law enforcement, do you  
22 think that you could decide the case just on the evidence  
23 you hear in the courtroom? Do you think that you can do  
24 that?

25 A. Based on --

1 Q. Just the evidence you hear in the courtroom,  
2 not any feelings or emotions that you may have for somebody  
3 else in law enforcement?

4 A. Would that be based on anything -- I mean, I  
5 know things about this case.

6 Q. And that's the last -- the Judge has given me  
7 I don't have much time left. But let me cover that one last  
8 area with you. On a case like this that's a high profile  
9 case, everybody we talk to has heard about the case. And  
10 we're never going to get a jury of people that don't know a  
11 thing about this case. And it's okay as a possible juror to  
12 have heard about the case. You may have even formed some  
13 opinions somewhere along the line.

14 What the law basically requires is,  
15 again, you know, regardless of what you heard, you don't  
16 necessarily have to put it out of your mind. You just have  
17 to be able to tell us that I can base my decision on the  
18 facts and the evidence that I hear in the courtroom. Okay?  
19 You would probably agree with me that would be the best  
20 source of information.

21 I don't know if you are like me.  
22 Sometimes I'm a little skeptical about what I read or hear  
23 on the TV. But do you think that you could, regardless of  
24 what you heard or read about this case, just decide this  
25 case based on the facts and the evidence that you hear in

1 the courtroom?

2 A. Yeah. I guess in all honesty on that, you  
3 know, I do know about the case because I remember it being  
4 on TV and I read about the case.

5 Q. Sure.

6 A. And that being, you know, something like this  
7 happening to a police officer, you know, I do have feelings  
8 about that and --

9 Q. Do you think that you can put all that aside  
10 and just base your verdict just on what you hear in the  
11 courtroom?

12 A. Yeah, I would like to think that I can do that  
13 and do my societal job on something like that, but I do have  
14 some mixed feelings just based on what I've read and what  
15 has happened to where that might be a little harder for me  
16 to do.

17 Q. I understand it may be tough. Because to tell  
18 you not to think about something you already know is kind of  
19 unnatural and not very within our human nature. But,  
20 actually, it works for both sides because, you know, what  
21 you may have heard or read you never know whether it's  
22 correct.

23 In order to be fair to both sides, you have to  
24 concentrate and base your decision on what you hear in the  
25 courtroom and it's kind of one of those questions I'm going



1 to have to pin you down on a yes or no answer. May be hard,  
2 maybe not. But do you think that you can do it, just make  
3 that decision based on what you hear in the courtroom?

4 A. And it has got to be a yes or no --

5 Q. Pretty much. That will be the last question I  
6 ask you. I guarantee you.

7 A. I guess if I have got to go with a yes or no  
8 on that, you know, to being -- I guess I would have to say  
9 yes on that. Like I said, it's still a little difficult,  
10 but I would like to think that I can do that.

11 Q. Okay. So you can make your decision just  
12 based on what you heard in the courtroom, right?

13 A. I'm trying to -- that's a tough one.

14 Q. You have already answered yes, right?

15 A. Yes, with a qualification, right.

16 Q. It's a yes or no question. If I don't ask  
17 you, they are going to ask you and the Judge is going to ask  
18 you.

19 A. In this particular case it's, you know, I've  
20 still got to qualify that it would be hard based on the  
21 evidence that is presented in the courtroom. I would like  
22 to think that I can try to do that, but I do know what  
23 happened. And, you know, so I guess I can say yes on it, if  
24 you have got to have an answer. It's a little bit over the  
25 line yes, but I'll say that.

1 Q. I think that's where I'm going to quit,  
2 Mr. Hamman. Thanks for your time.

3 MR. WIRSKYE: I will pass the juror.

4 THE COURT: Ms. Busbee?

5 CROSS-EXAMINATION

6 BY MS. BUSBEE:

7 Q. Okay, Mr. Hamman. I'm going to let you tell  
8 me how you really feel. You are the kind of juror that we  
9 love to have down here because it doesn't seem like you are  
10 trying to hide anything.

11 Here's what happens. Sometimes when we  
12 talk to jurors, by the time you have made it to where you  
13 are right now, you have already been culled out. You don't  
14 know how many times some of the strange things that people  
15 say on their questionnaires and the opinions and whatnot  
16 and, you know, we kind of agree on who we are going to talk  
17 to.

18 So from your questionnaire you,  
19 obviously, appear to be middle of the road, that somebody --  
20 that both sides may find a juror. You know, it's hard to do  
21 this. And the reason that it's hard to do it is it's such  
22 an extreme penalty. Nothing hits harder to home than  
23 causing the death of someone else. It has to do with why  
24 we're here and it has to do with what the outcome will be.

25 So I'm pretty sure -- and after talking

1 to you or listening to you talk to Mr. Wirskye, I'm quite  
2 certain that you can follow the law. And I'm quite certain  
3 that you are going to tell us the truth. What I don't want  
4 you to do is think that there's something wrong with your  
5 opinions. It's taken -- well, let's see. You may or may  
6 not know that at one point the death penalty in Texas was  
7 found unconstitutional and because it was kind of -- it was  
8 a formless question once someone had been found guilty of  
9 capital murder, there were no guidelines for jurors to tell  
10 them what they had to do to determine constitutionally to  
11 assess a death penalty. You know, so some communities it  
12 was almost a lynch mob mentality and it wasn't fairly  
13 administered.

14               So we -- and this has evolved even since  
15 I think it was 1976 when they drafted the first death -- new  
16 death penalty statutes. So it's a work in progress in some  
17 respects. Once in a while you will read something in the  
18 newspaper that the Supreme Court has either broadened it or  
19 narrowed it. It's a work in progress, which means if you  
20 have an opinion that is different than our scheme here, it  
21 wouldn't be surprising. In fact, I think most people would  
22 feel that way. They either think it should be stronger or  
23 they think it should be less strong.

24               So the thing is -- and you saw how many  
25 people we brought down that morning. We brought down -- we

1 brought that many again in the afternoon. So we expect to  
2 talk to a lot of people. And there's nothing wrong with  
3 not, you know, getting on this jury. The only wrong thing  
4 would be if we got a false impression of your feelings based  
5 on just asking if you could follow the law. I just want to  
6 know how you feel, because it's okay. I don't think that  
7 anybody necessarily that I know agrees with every law. It's  
8 not like we're asking you to break the law. We're just  
9 asking you to tell us your personal feelings because nobody  
10 wants to put you in a position to violate your own moral  
11 code, so to speak, one way or the other.

12 So do you know -- you said that you were  
13 uneasy and you had a hesitation. And I kind of see this  
14 here because you caught up to the scheme faster than anybody  
15 else who has been sitting in your chair. We've only been  
16 doing this two days, but you pretty much honed in on your  
17 feelings about this one.

18 Is he going to be dangerous in the  
19 future? You would like some evidence on that, whatever that  
20 might be. And was he part of a gang that anticipated or  
21 planned to take a human life, would be things that would  
22 have been proved to you beyond a reasonable doubt. And it's  
23 not a more if I say maybe, maybe not. It's to be proved to  
24 you beyond a reasonable doubt. And if it was proved to you  
25 beyond a reasonable doubt, you would have said yes to those

1 first two questions.

2 I think I'm hearing from you that No. 3  
3 might be a good thing for people who were uncomfortable with  
4 assessing the death penalty, but that as a real matter in  
5 the real world, there really isn't anything else that you  
6 would need to know to be able to change your mind about  
7 giving the death penalty.

8 A. Well, I think that some people, they might  
9 mean well or they might be bold enough to go that route with  
10 1 and 2 and then at some point in time they might recheck  
11 themselves and say, man, what have I done? I don't -- I got  
12 mixed in with the group or I got caught up in the subject of  
13 it all and I didn't really mean to go that far. You know  
14 how some people -- well, some people in a group they will do  
15 things they might not do individually. But the group gives  
16 the adrenalin flow or something and somebody will end up  
17 doing something.

18 And so that's what I'm saying. That is  
19 my thoughts about that is that you have something in there  
20 where somebody can step out at the last minute, if they  
21 don't feel -- if they feel like they have gotten caught up  
22 in something and they do want to back out, that might be the  
23 back door to get them out of that for their own moral  
24 conscience.

25 Q. Right. I think that's what -- but you don't

1 need Special Issue No. 3 in your mind?

2 A. In my mind, if I've gone the route of the 1  
3 and the 2 and I've found that somebody has murdered somebody  
4 beyond a reasonable doubt, then, yeah, that's just the way I  
5 feel about the laws. If we become too lenient, then, then I  
6 think more people would end up doing that, if it was just a  
7 life. If we didn't have the death penalty, it was just life  
8 in prison, then there's -- because I know -- well, I guess  
9 from reading and hearing things on the news, I don't know  
10 firsthand that people, they might have a better life in  
11 prison or might be the same type of life. It's a life that  
12 I'm not used to. I don't really know anything about. But I  
13 know it exists that there's life on the streets that goes on  
14 just like life in a prison.

15 And so somebody might end up feeling like  
16 they are better off or just as well off in prison. At least  
17 they are getting fed every day and they have some place to  
18 stay and perhaps it -- perhaps it is less violent because  
19 it's a little more structured, feel better in there. So  
20 they might end up committing a crime and murdering somebody,  
21 knowing they are not going to have to die for it. And they  
22 -- maybe they don't intentionally mean to, I guess,  
23 premeditate going out and killing somebody, but they might  
24 rob somebody for some money and kill them and not think  
25 anything of it because, hey, it's just going to be life in

1 prison.

2 Q. Okay. I get your point. So the way you see  
3 the scheme, you don't need and don't really consider Special  
4 Issue No. 3 to be necessary to you?

5 A. No. Once I get to the 1 and the 2, if I'm  
6 satisfied in my mind with those two and then like we were  
7 saying, this is after the fact we found somebody guilty and  
8 now we've heard other character witnesses and other  
9 testimony and then we've gone back into the jury room to  
10 decide that, then I don't think that I would need the No. 3  
11 personally.

12 Q. Okay.

13 A. I see why it's there.

14 Q. For other people?

15 A. For other people.

16 Q. So, quite frankly, and I think that you told  
17 us this five times, but for the record, if Special Issues  
18 No. 1 and 2 have been answered by you yes beyond a  
19 reasonable doubt, you wouldn't say yes that he should live?

20 A. Well, right. Because if that's the way the  
21 law -- I mean, if that's the way the case is set up and  
22 that's how he's been prosecuted, then I wouldn't -- I  
23 wouldn't have the 3 in there. I mean, my feelings would end  
24 up being that somebody would deserve the death penalty at  
25 that stage.

1 Q. Okay. So, question 3 just isn't for you, just  
2 1 and 2 and at that point you say it's been proved to me  
3 beyond a reasonable doubt and any of the other issues are  
4 immaterial?

5 A. What do you mean by immaterial?

6 Q. I found he's going to be a future danger, I  
7 found he did this intentionally, he knew it was going to  
8 happen or expected it to happen, that's all. These are the  
9 questions that you need to answer in order to assess a death  
10 penalty?

11 A. Uh-huh.

12 Q. And the other question is for people who have  
13 some trepidation about assessing the death penalty?

14 A. Well, you know, and like I said, somebody  
15 might get caught up into that and they might go through and  
16 they might have voted guilty and then they are coming in and  
17 answering 1 and 2 and they are looking at that and saying,  
18 yeah, that's good. I go with that. I go with the No. 2.  
19 But then at some point in time they might get cold feet.  
20 And so that No. 3 would leave them an out, according to the  
21 rules and the procedures going through there that answer 1  
22 and 2. And if you really can answer those yes at that stage  
23 of the game, you still might have cold feet and don't want  
24 to do that, you have changed your mind, so to speak, even  
25 though it's that late date, so the No. 3 does allow somebody



1 with the moral conscience to get out. I assume that's put  
2 in there so somebody has gone that far and they decide they  
3 wanted out, then that might bother them for the rest of  
4 their life that they actually had to put somebody to death  
5 and so they're thinking about that so that allows them to  
6 say, no, I don't answer that question yes.

7 Q. Okay. But you, yourself, do not consider --  
8 would not consider that as a backdoor way to get out once  
9 you have decided issue 1 and 2?

10 A. Yeah, for me personally.

11 Q. I think I got your true opinion out on that  
12 and I have beat a dead horse, too.

13 A. That's a hard one to answer a yes or no on.

14 Q. I know that I spend a lot of time in the  
15 courtroom and sometimes I, for various reasons, have to get  
16 on the witness stand so I'm used to being in here and I know  
17 it's a very nervous, you know, you get anxious and it's hard  
18 to concentrate once you first sit up there. So no matter  
19 how cool you are in your normal course of business, it's  
20 just an anxiety producing experience to be faced by a bunch  
21 of lawyers and drilled.

22 But you have been real frank with me and  
23 I appreciate it. And I'm not going to take up the time I  
24 have, but I was wondering, too, since you've been so candid,  
25 you said this several times when you were talking to

1 Mr. Wirsky about your knowledge of this case and then when  
2 asked if you could set it aside, I think it would be fair to  
3 say that you seemed to indicate that you would try and  
4 answer it yes, but you were really having some difficulty  
5 with that.

6 So you help us -- if you just say, you  
7 know, I can't promise you that I can set it aside or I swear  
8 that I can set it aside, but you need to err on the side of  
9 overcautiousness as far as fairness of the process goes.  
10 And, you know, there are people who may not tell us the  
11 truth and say they can. But I think that you have been  
12 telling us the truth. And I'm going to ask you to err on  
13 the side of cautiousness and tell us if you really can't set  
14 that aside or if you, quite frankly, you know what happened  
15 and you have already kind of made up your mind what  
16 happened.

17 A. Well, can I tell you what I do know about the  
18 case?

19 Q. Well, sure.

20 A. And I guess this is why, you know, I do have  
21 an opinion. I mean -- and I know that the -- we watched it  
22 on TV as it took place and it was interesting and this was  
23 on that "America's Most Wanted" and things of that nature.  
24 And, you know, I've read about the people involved in the  
25 case. And I know that in the robbery of the Oshman's, I

1 think it was that, you know, the policeman was shot about  
2 20, 25 times and run over.

3 So -- that would be, you know, knowing  
4 that information, that would be hard for me to consider that  
5 No. 3.

6 Q. Okay. Well, I'm really not talking about No.  
7 3 anymore. I'm talking about if you already have an opinion  
8 about guilt/innocence in this case.

9 A. You know, based on what I do know about that,  
10 you know, I guess I would probably have to say that I do  
11 have an opinion on that as being somebody mixed in with a  
12 group like that and having something like that happen, being  
13 a police officer it might -- the evidence would have to  
14 really be super strong for me to change my thoughts.

15 Q. So, in essence, we would have to prove to you  
16 that it hadn't happened or it hadn't happened as you think  
17 it did before you could change that opinion?

18 A. Yeah. My thoughts there would end up being  
19 that that whole group, that whole group of people, wouldn't  
20 have to be there.

21 Q. Okay.

22 A. I mean, I see that group of people being there  
23 and, like I said earlier, I think of a group of people as  
24 one. And so that whole group of people wouldn't -- if they  
25 weren't at the scene and that was proven beyond a reasonable

1 doubt, then that was a mistake that somebody had made  
2 arresting all these people and the other trials that have  
3 happened.

4 Q. So you would have to hear from us something  
5 different than what you have already heard in order -- well,  
6 that's one of those questions that makes sense to me, but  
7 probably didn't make sense to someone else. You know what  
8 happened and I'm guessing that you are saying that you  
9 really do know what happened and you can't promise us to a  
10 certainty that you can set that aside if you sat on this  
11 particular case?

12 A. Yeah. Knowing what happened, how it happened,  
13 and, you know, just the degree of what happened, then that  
14 would be hard for me to. Like I said earlier, it might be  
15 something I would try to put aside, just as a duty.

16 Q. Sure.

17 A. But it would be hard to just blank my mind of  
18 that.

19 Q. And you can't guarantee that? I'm hearing  
20 that in your voice?

21 A. Yeah. I don't know if I could guarantee that  
22 I can blank my mind and start totally fresh without, like I  
23 didn't know anything had happened.

24 Q. Okay. Listen, I appreciate your candor.

25 MS. BUSBEE: Approach the bench?

1 THE COURT: Parties agree?

2 MR. SHOOK: Yes.

3 THE COURT: Mr. Hamman, as she said, we  
4 appreciate your honesty. You have indicated that you know a  
5 whole lot about this case and also the Special Issue No. 3.  
6 The parties have agreed this is not your case. So we're  
7 going to excuse you from jury service and you are free to  
8 go. Thank you for coming down.

9 [Prospective juror out]

10 [End of Volume]

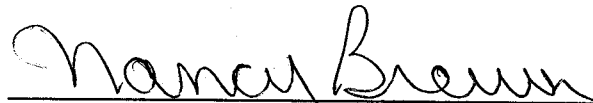
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2 COUNTY OF DALLAS \*

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11 WITNESS MY OFFICIAL HAND on this the 4 day of

12 March, 2003.

13  
14 

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74851

VOLUME 9 OF 61 VOLUMES

TRIAL COURT CAUSE NO. F01-00328-T

STATE OF TEXAS \* IN THE DISTRICT COURT  
VS. \* DALLAS COUNTY, TEXAS  
PATRICK HENRY MURPHY, JR. \* 283RD DISTRICT COURT

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INDIVIDUAL VOIR DIRE

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**FILED IN**  
COURT OF CRIMINAL APPEALS

MAR 9 - 2004

Troy C. Bennett, Jr., Clerk

On the 3rd day of September, 2003, the following  
proceedings came on to be heard in the above-entitled and  
numbered cause before the Honorable Vickers L. Cunningham,  
Sr., Judge Presiding, held in Dallas, Dallas County, Texas.

Proceedings reported by machine shorthand.

**ORIGINAL**

A P P E A R A N C E S

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P R O C E E D I N G S

THE COURT: Ready for Mr. Emery.

[Prospective juror in]

THE COURT: Good morning, sir. How are you?

PROSPECTIVE JUROR: I'm great. Thank you.

THE COURT: Is your name Phillip Wayne Emery?

PROSPECTIVE JUROR: Yes.

THE COURT: Good morning, Mr. Emery. Thank you for being here. You brought your guide. Did you have an opportunity to read that?

PROSPECTIVE JUROR: Yes.

THE COURT: We put a lot of law in front of you and trying to digest in a very short period of time. Please understand that you don't have to be able to integrate all that law and understand it from front to back right now. The lawyers are going to visit with you and try to explain it to where you can understand it. And my job is to be sure that you, A, understand the law --

PROSPECTIVE JUROR: Okay.

THE COURT: -- and, B, can you follow the law? If you don't understand their questions, just say, Judge, can you explain it to me, if they get you confused,

1 and then I'll try to do my best to explain it to you.

2 With that, the only question that I have  
3 for you, sir, is will you be able to serve this Court for  
4 two weeks, beginning November 10th?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Any questions?

7 PROSPECTIVE JUROR: One, yes. In reading  
8 this when I first came down and filled out the survey, I  
9 forget the date I was here --

10 THE COURT: Back in May.

11 PROSPECTIVE JUROR: It was for Patrick  
12 Murphy and this is saying somebody else. This is saying --  
13 and maybe it's just an example, but I don't think it is.  
14 This is saying for Randy Ethan Halprin.

15 THE COURT: You must have an old one.  
16 Good reading. I have corrected those. If you should read  
17 it was a different template, it is for Mr. Murphy.

18 PROSPECTIVE JUROR: Okay.

19 THE COURT: Good question. We'll figure  
20 that out, thank you. Mr. Wirskey, would you like to  
21 inquire?

22 MR. WIRSKYE: Yes.

23 PHILLIP EMERY,  
24 having been duly sworn, was examined and testified as  
25 follows:

DIRECT EXAMINATION

BY MR. WIRSKYE:

Q. My name is Bill Wirskye. I'm going to be the Assistant DA to spend a few minutes visiting with you this morning. We appreciate you showing up early and being on time so we can get started.

What do you think about all this now that you have been called back down for the individual interview?

A. Well, it's a little -- I've never been involved in anything like this, so it's kind of overwhelming.

Q. We apologize kind of for the setup. In a normal nondeath penalty or noncapital case we talk to the jurors as a group. But since this is a case where we're seeking the death penalty, we get to talk to you individually. Kind of the best way to do it is put you on the witness stand. I know it's a little uncomfortable, but to the extent possible I hope you will try to be comfortable.

There's no right or wrong answer. Both sides really are trying to figure out how you feel about some issues and if you think you are the right type person to be on a case like this. I'll talk to you a little bit about some of the things in your questionnaire, a little bit about the death penalty, and then maybe, finally, a little

1 bit about the law that you have read that may apply in this  
2 case.

3 You told us you are generally in favor of  
4 the death penalty; is that correct?

5 A. Uh-huh.

6 Q. What do you think the -- or why should we have  
7 it as a society, the death penalty, in your view?

8 A. Well, I just was brought up in church and I've  
9 always believed in an eye for an eye. You are not supposed  
10 to take somebody else's life and I just have always been  
11 taught and feel and I believe that if you take somebody's  
12 life, your life should be taken, also.

13 Q. Okay. So that's something you have believed  
14 in most of your adult life it sounds like?

15 A. Uh-huh.

16 Q. Are there any particular cases that come to  
17 mind, maybe cases you read or heard about or particular type  
18 of set of facts or something that when you think about the  
19 death penalty you think, gee, that's an appropriate case for  
20 the death penalty?

21 A. I really can't think of one that comes to mind  
22 per se, no.

23 Q. No case that you followed in the media or  
24 anything like that?

25 A. Not really, not for the death penalty, I

1 guess.

2 Q. Okay. Just off the top of your head, do you  
3 think that you might be the type person that could  
4 participate in a process like this? I know it's not for  
5 everyone, but --

6 A. Well, honestly, I would rather not.

7 Q. Most people wouldn't. I understand.

8 A. But, you know, if I'm chosen and have to do  
9 it, I'm sure I can do it.

10 Q. Okay. Great. What type of work are you in?

11 A. I'm in sales.

12 Q. Okay. What product or line?

13 A. Plantation Shutters, so it's a lot of new home  
14 construction, visiting with new home owners about all their  
15 window coverings in their house.

16 Q. Do you travel or pretty much in town?

17 A. Pretty much Metroplex here, yeah.

18 Q. Your wife works in some kind of security; is  
19 that right?

20 A. Yes.

21 Q. What does she do?

22 A. She's a private security officer for Tenant  
23 Health Corporation, so she does a lot of traveling and she's  
24 responsible for the security, the privacy security, of all  
25 the patients for all the hospitals that Tenant Corporation

1 owns.

2 Q. The health records and things like that?

3 A. Yeah.

4 Q. It's not a situation where she carries a  
5 weapon or --

6 A. No.

7 Q. Wears a badge?

8 A. No. She probably wears a badge, but she  
9 doesn't carry any weapons.

10 Q. Okay. You also told us in your free time you  
11 like to fish?

12 A. Uh-huh.

13 Q. What type of fishing do you do?

14 A. Mostly trout fishing is what I was brought up  
15 fishing for, but it's learning to, you know, how to catch  
16 bass and catch fish.

17 Q. I'm a bass fishing, large mouth?

18 A. That's the best kind of fishing.

19 Q. I don't get the chance to go as much as I  
20 would like. My boat is full of cats and spiders.

21 A. Yeah.

22 Q. We talked a little bit about the death penalty  
23 and you told us generally you are in favor of it. Let me  
24 run, I guess, a fact scenario by you and get your thoughts  
25 on it.

1                   You know, oftentimes crimes are not just  
2 committed by one person. I think when you think about the  
3 death penalty in Texas or, you know, like murder in the  
4 course of a robbery, you think about one person going in  
5 with a gun, maybe holding up a 7-Eleven and shooting the  
6 clerk and committing a capital murder. But oftentimes they  
7 are committed by gangs or groups of people, that type thing.

8                   The law allows us, depending on the facts  
9 and circumstances, not only to prosecute, I guess, for lack  
10 of a better word, the triggerman for the death penalty, but  
11 also depending on the facts and circumstances to prosecute a  
12 nontriggerman, somebody that doesn't actually pull the  
13 trigger in the case, prosecute them for capital murder and  
14 ultimately maybe even receive the death penalty.

15                  And there are some people who are in  
16 favor of the death penalty, such as yourself, who, you know,  
17 really are comfortable with that being the law and there's  
18 another group of people that just say, you know, if I was  
19 king for a day or Governor for a day, in my state and my  
20 world that the option of the death penalty would never be  
21 available for that nontriggerman. Only the person that  
22 actually pulled the trigger should be subject to the death  
23 penalty, not the nontriggerman. What do you think about  
24 that?

25                  A.       That's a real gray area, I have to admit. I



1 would not have a problem sentencing somebody to a death  
2 penalty if they were the trigger person, obviously. A  
3 nontrigger person, depending on the situation and that sort  
4 of thing, you know, I don't know. It's a tough question.  
5 If they were just in the wrong place at the wrong time, I  
6 would have a problem convicting somebody of the death  
7 penalty.

8 Q. Sure.

9 A. Somebody may have just lost their head and  
10 lost their cool and killed somebody and everybody else was  
11 just like what are you doing, you know. Then I don't know  
12 if that person would be worthy of the death penalty.

13 Q. Okay. Let me give you this fact scenario and  
14 see if it kind of crystallizes or helps think through this.  
15 Let's say Mr. Shook and I decide we're going to rob a bank.  
16 We've both been to prison before and I know he's a violent  
17 guy. The plan is for him to take the gun in and hold up the  
18 bank teller, the bank clerk, while I go in without the gun  
19 maybe and I'm supposed to collect the money, that type  
20 thing.

21 As we go in and do that, I see the clerk  
22 reaching for the silent alarm and I tell Mr. Shook, hey,  
23 she's reaching for the silent alarm. He shoots and kills  
24 the clerk. Obviously, he's the triggerman. He's committed  
25 capital murder. The law also allows, you know, probably in

1 that set of facts and circumstances for me to be prosecuted  
2 for capital murder and, depending on the answers to the  
3 Special Issues that you looked at, maybe receive the death  
4 penalty. What do you think about that type of scenario?

5 A. Oh, that seems a little more clearcut. You  
6 were definitely involved and participated one hundred  
7 percent in the death of that clerk. So, yeah, I wouldn't  
8 have a problem there.

9 Q. You can keep an open mind for the death  
10 penalty for the nontriggerman in that scenario?

11 A. Uh-huh.

12 Q. That's basically what the law is. Obviously,  
13 if it's the wrong place at the wrong time, somebody that  
14 wasn't connected in any way, of course, they wouldn't be  
15 guilty of anything.

16 You know, sometimes it's called the law  
17 of accomplices. If I help Mr. Shook, if I aid, encourage,  
18 solicit, or direct him to commit a capital murder, then it's  
19 just as guilty legally of capital murder and depending on  
20 the answers to the questions, I could receive the death  
21 penalty. Or if you believe we agree to commit this bank  
22 robbery, under my example, and in the course of that robbery  
23 Mr. Shook commits that murder in furtherance of the bank  
24 robbery, even though I didn't have the intent for someone to  
25 die, I could be found guilty of capital murder and

1 ultimately receive the death penalty, depending on what the  
2 jury thinks. Does that make sense to you?

3 A. Yeah.

4 Q. Okay. So I just want to make sure you are not  
5 one of those people that would completely take the death  
6 penalty off the table in any situation for a nonshooter.  
7 Doesn't sound like you are.

8 A. No, I wouldn't.

9 Q. Okay. Under that fact scenario, what do you  
10 think would be important to look at for the nontriggerman?  
11 What types of facts would you want to know or what would you  
12 be interested in knowing about the crime?

13 A. Well, as much information as I could get.  
14 Obviously, I think his background would mean a lot, you  
15 know, if he had a violent background and had been known to  
16 do it more than once, that kind of stuff. And all the  
17 involvement that he had, you know. In the case you just  
18 gave me there was quite a bit of involvement and quite a bit  
19 of facts backing that up and that would all be very  
20 important to me.

21 Q. Okay. Fair enough. We talk to a lot of  
22 people in these cases and almost everybody we talk to in  
23 this particular case, I think, has heard something about  
24 this case, pretty much heard something, TV, radio, that type  
25 of thing.

1                   The law is that just because you have  
2 heard something about the case, you are not necessarily  
3 disqualified from being a juror. All the law requires is  
4 that potential jurors base their verdict just on the  
5 evidence they hear in the courtroom. You know, it doesn't  
6 ask you to forget what you have heard or anything like that.  
7 It just asks you to base your verdict on what you hear in  
8 the courtroom.

9                   And you, like everybody we've talked to,  
10 indicated they had heard something about this case. What do  
11 you remember hearing about it?

12           A.       Well, more than anything, just the Texas 7 was  
13 a big term. And the fact that they ended up being caught in  
14 Colorado Springs and I'm from Colorado and lived there my  
15 whole life. So that was kind of an interesting event in  
16 Colorado.

17           Q.       Trout fishing?

18           A.       Exactly.

19           Q.       You don't learn that in Texas.

20           A.       No.

21           Q.       Okay.

22           A.       Understand it's just a real coincidence and  
23 didn't mean anything. But the last time I had jury duty was  
24 the day they were bringing the first Texas 7 to Dallas in  
25 the big convoy and I just happened to go to lunch break and

1 I got out of the -- from my lunch break and all the cameras  
2 were here and all the news stations, so I got to see the  
3 convoy come in while I was here. And just little things  
4 like that. And it was interesting to see them on TV and see  
5 their faces.

6 But as far as all the facts go and stuff,  
7 I really don't have all the facts. What you see on the 6:00  
8 news is what I know, what I heard.

9 Q. But the actual details of anything, sounds  
10 like you are still pretty much in the dark about them?

11 A. I am, I really am.

12 Q. So it doesn't sound like it would be that big  
13 of an issue for you if you were a juror to just base your  
14 verdict on what you hear in the courtroom?

15 A. No, wouldn't be an issue.

16 Q. So you can put anything you have seen or heard  
17 out of your mind?

18 A. I think so, yes.

19 Q. Have you had a chance to follow any of the  
20 other trials in this case?

21 A. No, sir.

22 Q. Okay. Fair enough. Like I said, we talk to a  
23 lot of people and we really, we don't want to jam anybody up  
24 or put anybody in a bad spot. But I can tell you, you know,  
25 it's our position at this table and just to be up front with

1 you, we are prosecuting Mr. Murphy under that law of  
2 accomplices as a nontriggerman.

3 But I want to be up front with you. This  
4 table thinks, you know, we have the type and quality of  
5 evidence that's going to cause a jury to find him guilty of  
6 capital murder and answer those Special Issues in such a way  
7 that he will actually receive the death penalty.

8 And I know it's one thing to kind of talk  
9 in the abstract or philosophically about being in favor or  
10 supporting the death penalty, but I know sometimes for some  
11 people it's quite another thing to come down here and  
12 actually see a living, breathing human being and maybe be  
13 asked to participate in a process that ultimately would end  
14 up, you know, with him being executed down in Huntsville, to  
15 not put too fine a point on it, but actually lying dead on a  
16 gurney in Huntsville.

17 In Texas the death penalty is a reality.  
18 We do carry it out in this state. If he receives the death  
19 penalty some day he would be executed. I want to make sure  
20 that's something that you are comfortable with -- or maybe  
21 that's not a good word, but you are at least okay with going  
22 ahead with this process and potentially being a juror?

23 A. Yeah. I think so. I have given a lot of  
24 thought. Never -- if somebody were to ask you, I've never  
25 been involved in a situation like that and to answer the

1 questionnaire back in May, it was eye-opener and then, since  
2 then, I've given it a lot of thought. And up to that point  
3 I never have -- you have never been put in that situation,  
4 you don't really go to those extremes. And it would be  
5 difficult.

6 Yeah, it would be difficult, but at the  
7 same time you have to take all the -- I have to take all the  
8 facts and, you know, if the law says this and all the facts  
9 point to the person being involved was guilty of those  
10 facts, then I can do it.

11 Q. Okay. And as you may know now from looking at  
12 the law for a few minutes, we don't ask a jury to vote yes  
13 or no on the death penalty. If a person is convicted of  
14 capital murder, you know, we ask a jury to look at three  
15 different questions and depending on how the jury answers  
16 those questions, determines whether the person receives that  
17 life sentence or they receive the death penalty.

18 So, again, I just want to make sure that  
19 you feel you are the type person that could take pen in hand  
20 and answer those three questions in such a way that it may  
21 result in the death of a human being and sounds like you are  
22 okay with that. It's not easy or not anything that you  
23 would enjoy.

24 A. Yeah.

25 Q. But you could do your duty, if you were called

1 on?

2 A. Yes, sir.

3 Q. Okay. And, again, just a little bit of  
4 background. Capital murder in Texas is always a murder, an  
5 intentional murder, plus something else. If you murder a  
6 fireman or policeman on duty, a child under six, you could  
7 be subject to the death penalty. If you commit an  
8 intentional murder during the course of another felony like  
9 robbery or something like that, you could be subject to the  
10 death penalty.

11 A lot of people come down here and think  
12 maybe any murder case would have the possibility of the  
13 death penalty and that's just not true. I could turn and  
14 murder Mr. Shook right now because I don't like the tie he  
15 has on, and do it in the most violent way and laugh about it  
16 and I may have been to the penitentiary five different  
17 times, but that would not be subject to the death penalty.

18 A. I didn't know that.

19 Q. We actually reserve just a certain subset of  
20 murder cases for capital murder. And in this case we have  
21 alleged the murder of a police officer on duty and, also, an  
22 intentional murder during the course of a robbery. And if  
23 we prove either one of those to a jury beyond a reasonable  
24 doubt, the law would entitle us to a guilty finding, that  
25 the jury find the defendant guilty of capital murder. And



1 that's, basically, the first part of the trial where you  
2 just kind of focus on the facts of the crime itself.

3 If that person is found guilty of capital  
4 murder, then you move into the second phase of trial which  
5 we call the punishment phase of trial. And that's where the  
6 jury answers those three Special Issues. At that point the  
7 rules of evidence broaden out a little bit. You may get to  
8 hear information about the person's background and  
9 character, good, bad, that type thing, prior history, prior  
10 crimes, if they exist, in order to help you as a jury answer  
11 those three questions.

12 And, again, one way to look at it is, if  
13 a person is convicted of capital murder, they are kind of  
14 sitting on a life sentence at that point. If the three  
15 questions are answered in such a way yes, yes, and no, then  
16 at that point and only then would they receive the death  
17 penalty.

18 So it's really kind of a two-phase  
19 process. Does that make sense to you?

20 A. Yes. Of the three questions, do they all  
21 three have to be yes or two of the three?

22 Q. Do you have them in front of you? Flip to  
23 them.

24 A. Uh-huh.

25 Q. We usually have the big exhibit, but we don't

1 have it this morning. It would be Special Issues No. 1, 2,  
2 and 3.

3 A. Yeah.

4 Q. Take a second and run through those and,  
5 again, I think you told us they had a different person's  
6 name in it. But if you just read over that, take just a  
7 minute to read over that.

8 A. Okay. [Prospective juror complies.] Okay.

9 Q. Those are the three. They are called Special  
10 Issues. I just refer to them as questions that need to be  
11 answered in a case such as this. They weren't drafted just  
12 for this case. The Legislature drafted them and they apply  
13 to all capital murder cases.

14 One thing to realize when you get into  
15 that punishment phase, the law asks the jurors to go back  
16 and look at each of these three Special Issues and kind of  
17 make an independent inquiry, okay, into each question to  
18 really exercise mental discipline and work through each  
19 question.

20 What the law doesn't want or doesn't  
21 envision is somebody who answers anything automatically.  
22 Sometimes we have people that come in here and say, if I  
23 found him guilty of capital murder in the first phase,  
24 that's automatically going to answer one of those three  
25 questions for me. And that's what the law doesn't want.

1                   We want jurors that can keep that open  
2 mind, use that mental discipline, be fair, and work through  
3 the facts they heard in the first part and the facts they  
4 heard in the second part and come to the right answer on  
5 these. Does that make sense to you?

6           A.       Yes, sir.

7           Q.       Okay. And if you will look at Special Issue  
8 No. 1, you know, you will see, you know, is there a  
9 probability the defendant would commit criminal acts of  
10 violence that would constitute a continuing threat to  
11 society? As you can see, we have the burden of proof on  
12 that. It's just like the first phase, the guilt. It's up  
13 to the State to prove to you as a juror that the answer  
14 should be yes, that they are going to be a future danger to  
15 society. So that question kind of starts off with a no  
16 answer. That's kind of a default setting. We have to prove  
17 to you beyond a reasonable doubt the probability that he  
18 would commit these future acts of criminal violence. Does  
19 that make sense to you?

20          A.       Yes.

21          Q.       And you can see it's basically asking the  
22 jurors to make a prediction on future events based on what  
23 they heard about the crime in the first phase and any other  
24 evidence they may have heard in the second phase.

25                   Is that something that you think you can

1 be comfortable with, making that sort of prediction, if you  
2 had some evidence or information in front of you?

3 A. Well, I don't know about comfortable, but --

4 Q. Again, that's probably a bad word for anything  
5 in this process, but is it something that you feel that you  
6 can do?

7 A. Yeah, I mean, yeah.

8 Q. Okay. A lot of words in that question are not  
9 defined. The law kind of leaves it up to the jury. It's  
10 kind of a common sense, really, question with some common  
11 sense words. But when you see that word "probability", what  
12 does that mean to you?

13 A. Well, probability, the likelihood or the  
14 chance.

15 Q. That's pretty much exactly what the law says,  
16 more likely than not, maybe 51 percent. It doesn't say a  
17 high probability or anything like that. Just more likely  
18 than not. Does that make sense to you?

19 A. Uh-huh.

20 Q. It talks about the "criminal acts of  
21 violence." Again, that phrase is not defined. Criminal  
22 acts of violence. Is there anything that comes to you off  
23 the top of your head that you think about when you hear that  
24 phrase? I know this is something you probably never thought  
25 about.

1           A.       Well, I mean, if I hear the term "criminal  
2 acts of violence", it's somebody violently breaking the law.

3           Q.       Okay. Again, the law leaves that definition  
4 up to you. I just like to point out that the law doesn't  
5 require us to prove to you as a potential juror that he's  
6 going to be responsible for taking another life or commit  
7 another murder or another capital murder, that type of  
8 thing. Does that make sense to you?

9           A.       Yes, sir.

10          Q.       It could be robberies, threats, assaults, that  
11 type of thing. Also, the very last word in that question  
12 talks about society. And the law doesn't really put a limit  
13 on that word "society". I'm kind of curious how you would  
14 define that or what kind of definition would you give it?

15          A.       The world I live in.

16          Q.       Okay.

17          A.       My neighborhood.

18          Q.       Okay. How about the world behind bars?

19          A.       Say that again? I'm sorry.

20          Q.       The world behind bars, prison. Again, the law  
21 doesn't necessarily limit that word "society." And I'm just  
22 curious, I guess, when you look at it you would define it to  
23 include, you know, people behind bars, other prisoners,  
24 guards, teachers, doctors, that type of thing?

25          A.       Oh, I misunderstood your question for a while

1 there.

2 Q. It's early in the morning, so it's probably  
3 me.

4 A. Yeah, it would go for anybody's space, you  
5 know, whether it's minor, whether it's who is ever around  
6 it, violent criminal.

7 Q. Again, that's pretty much -- again, the law  
8 allows you to define it that way. It's a pretty  
9 straightforward question. We have to prove it to you beyond  
10 a reasonable doubt. Again, we do get some people who come  
11 down here and when we explain the law to them, they tell us,  
12 very frankly, Mr. Wirskye, when I get to that Special Issue  
13 No. 1, that first question, my mind is closed. If I have  
14 found somebody guilty of capital murder, whether they are  
15 the triggerman, nontriggerman, whatever, if I have found  
16 them guilty of capital murder, I'm always automatically  
17 going to answer that question No. 1 yes. I'm always going  
18 to feel that way. It's automatic. I know what the law  
19 requires. I just couldn't keep that open mind.

20 How do you feel about that? Do you think  
21 you could keep that open mind and again go back and make  
22 that independent inquiry to answer that question No. 1?

23 A. Well, really and honestly, if I found somebody  
24 guilty, the State proved to me without a reasonable doubt  
25 that that person was guilty of whatever act that we're

1 talking about, I would probably lean towards putting a yes  
2 for No. 1 automatically.

3 Q. It's okay to lean that way or be predisposed  
4 to what the answer is. What we can't have is people that do  
5 it automatically, that don't look at the evidence, and just  
6 say if I found him guilty of capital murder that fact and  
7 that fact alone is going to cause me to automatically answer  
8 that question yes.

9 I could sit here and give you  
10 hypotheticals all day long. You know, my neighbor sexually  
11 assaults my young daughter, okay? And I find out about it.  
12 I think about it for a few days. I go over there, kick down  
13 his door, committing burglary, shoot him because he's  
14 molested my daughter. I've committed a capital murder.

15 But a jury may find when they get to that  
16 Special Issue that I would never be a future danger because  
17 it was such an isolated event. It's out of character for  
18 me, that type of thing. So I could give you hypotheticals  
19 all day long.

20 And it's okay to lean that way or be  
21 predisposed. We just need you to say you could keep that  
22 open mind and you won't automatically answer the question  
23 that way.

24 Do you think that you could, you know,  
25 use that mental discipline and keep that open mind and give

1 an independent inquiry?

2 A. Yes. After your hypothetical, that kind of  
3 defined it a little better.

4 Q. Well, the bottom line is, you just don't know  
5 what's coming. We sit here now and ask you to keep an open  
6 mind and everyone conjures up those facts that are the worst  
7 facts imaginable and, gee, a capital murderer is probably  
8 going to always be a future danger.

9 But you just don't know what's coming in  
10 the case because you haven't heard the facts and evidence.  
11 And that's why at this point we ask you, the law will, can  
12 you keep an open mind? Sounds like that's something you can  
13 do. You wouldn't just answer that question automatically  
14 yes because you found him guilty of capital murder; is that  
15 right?

16 A. Yes.

17 Q. Okay. Moving on to Special Issue No. 2. It's  
18 kind of like Special Issue No. 1. We have the burden of  
19 proof on it. It starts out with a no. We have to prove it  
20 to you a yes. It kind of deals with the situation we've  
21 already talked about whether a person actually pulled the  
22 trigger or doesn't actually pull the trigger.

23 You know, as you read this question, if  
24 the person actually caused the death of the deceased, that's  
25 easy. They are the triggerman. But if they didn't actually



1 cause the death, did they intend the deceased to be killed  
2 or did they actually anticipate that a human life would be  
3 taken? And that's kind of, you know, in order to find  
4 somebody guilty, going back to our scenario, if you find  
5 that I should have anticipated that Mr. Shook may have shot  
6 that teller, if I should have anticipated, you can find me  
7 guilty of capital murder.

8 When we get to the second phase of the  
9 trial, the law imposes a little bit higher burden and says,  
10 you know, before you can assess the death penalty you have  
11 got to find not only should I have anticipated that a life  
12 could be taken, but that I actually anticipated that a life  
13 would be taken, that type of thing. Does that make sense to  
14 you?

15 A. Yes, sir.

16 Q. Okay. It's a little bit higher burden from  
17 the guilt.

18 A. Uh-huh.

19 Q. It goes to that situation we talked about, the  
20 person that doesn't actually cause the death, the  
21 nontriggerman, which, you know, is how we're prosecuting  
22 this case. But, again, the law requires you to keep an open  
23 mind. You can't answer it automatically, even though you  
24 may have found he should have anticipated. You have to make  
25 that independent inquiry in the second phase of the trial

1 and see whether we have proven it to you beyond a reasonable  
2 doubt that they actually anticipated a life would be taken.

3 Does that make sense?

4 A. Yes, sir.

5 Q. And if we prove it to you, the answer would be  
6 yes.

7 A. Yes.

8 Q. Make sense?

9 A. Uh-huh.

10 Q. I want to make sure you see that difference  
11 between the should have in the first part and actually  
12 anticipate in the second.

13 A. Right.

14 Q. And, again, you are not going to answer that  
15 question automatically just because you found somebody  
16 guilty of capital murder; is that right?

17 A. That's right.

18 Q. Okay. Finally, Special Issue No. 3. This is  
19 kind of the last stop in the process. Kind of call it our  
20 safety net or safety valve. We call it the mitigation  
21 question. This is a little bit different than the first two  
22 questions because neither side has the burden of proof.  
23 It's just up to the jury to answer this question yes or no.

24 Basically, this question asks you to go  
25 back, look at the facts of the crime, look at the

1 defendant's character and background and his personal moral  
2 culpability, what blame he bears in the offense, and see if  
3 there's anything mitigating, anything that lessens his  
4 personal moral blameworthiness, and if you do find that  
5 there's something mitigating, is it sufficiently mitigating  
6 that his life ought to be spared, that he ought to get that  
7 life sentence instead of the death penalty. Does that make  
8 sense to you?

9 A. Not really. Would you say that one more time?

10 Q. Sure.

11 A. I'm not sure what mitigating means.

12 Q. You know, there's not necessarily a legal  
13 definition. I've seen it defined as something that lessens  
14 the defendant's moral culpability, his moral  
15 blameworthiness.

16 A. Okay.

17 Q. You know, I'll give you a quick example. Say  
18 we go back to when I shoot Mr. Shook because of his tie. I  
19 may shoot him ten times and the jury would think that is  
20 aggravating. Okay? I may shoot him once because I don't  
21 like his tie and realizing, oh, my gosh, what have I done?  
22 I throw away the gun, try to give him CPR, call 911. The  
23 jury may find that mitigating. Yes, I committed the murder,  
24 but my actions afterwards were mitigating. It's opposite of  
25 aggravating, anything that lessens a person's moral

1 blameworthiness.

2                   Some people think maybe the age of the  
3 person. You know, if somebody is 19, 20 years old, some  
4 jurors tell us, hey, that may be mitigating because they  
5 were young. Other jurors may think, gee, that's actually  
6 aggravating and it was at least not mitigating because they  
7 are old enough to know the difference between right and  
8 wrong.

9           A.       Yes, thank you.

10          Q.       Does that make sense?

11          A.       Yes.

12          Q.       Again, we know this is nothing, hopefully, you  
13 have ever thought about in your life and we are throwing a  
14 lot out to you in a little bit. Is there anything off the  
15 top of your head that you think may be mitigating?

16          A.       With the case?

17          Q.       I'm sorry?

18          A.       Can you repeat the question?

19          Q.       Is there anything off the top of your head  
20 that strikes you as maybe potentially mitigating when you  
21 think about a capital murder case? We talked about age.  
22 Some people talk about drug use, maybe mental retardation,  
23 things like that. Any of those kind of strike you?

24          A.       Well, yeah, I mean, I think every case would  
25 be isolated and you would have to take all the

1 circumstances. But, yeah, I think a handicap, a mental  
2 handicap, or a --

3 Q. You know, we're not talking about somebody who  
4 is so retarded, I guess, they don't know the difference  
5 between right or wrong, but some mental handicap like you  
6 said. Does that make sense?

7 A. Yes. I think I would have to take a few of  
8 those things into consideration.

9 Q. And that's what the law asks you to do,  
10 basically, to look at those things and if you find something  
11 mitigating, is it sufficiently mitigating that his life  
12 ought to be spared, that type of thing?

13 A. I understand, yeah.

14 Q. The law doesn't define mitigating,  
15 necessarily, doesn't require that you consider any certain  
16 fact or factor mitigating. It just leaves it up to the  
17 jury. In fact, the jurors can disagree. One juror could  
18 think this is mitigating and another think, no, it's not.

19 So it's kind of up to you. And, again,  
20 it's that last stop, that last check in the system, that  
21 safety valve, asks you to take a deep breath, stand back,  
22 because you know at this point you have found him guilty of  
23 capital murder, you said he's going to be a future danger,  
24 you said he anticipated that a life would be taken, you have  
25 already made a lot of decisions, but at this point we want

1 you to stand back, take that deep breath, look at everything.  
2 you have heard, look for mitigation, and see if it's there  
3 such that his life should be spared.

4 A. I understand.

5 Q. Keep that open mind. Again, we talk to some  
6 people that say, if I'm that far in the process, if I have  
7 already made those decisions, my mind is closed. There's  
8 never going to be anything mitigating at that point. And  
9 those people wouldn't be qualified to be a juror.

10 What I kind of hear you telling me is you  
11 could keep that open mind even when we get that far in the  
12 process; is that right?

13 A. Yes, sir.

14 Q. Okay. Any questions about those Special  
15 Issues, those three questions, or how they work?

16 A. No, no, sir. I think you have explained them  
17 pretty well.

18 Q. Well, it will be the first time, if I have.  
19 So you have never been on a jury before; is that right?

20 A. No, sir.

21 Q. Okay. Let me talk to you just a little bit  
22 about some basic laws that apply in any trial, not  
23 necessarily a death penalty case. But the law kind of  
24 requires that you start every witness out on the same level  
25 of credibility, you know, when they walk in this courtroom

1 and hit the witness stand. You can't necessarily give a  
2 witness a leg up because, say, he's a police officer, that  
3 type thing. You know, once they start testifying, you can  
4 find them credible or find them not credible, but you at  
5 least have to start them off on the same level. Does that  
6 make sense to you?

7 A. Yes.

8 Q. You think that you can do that, you know,  
9 start a police officer off on the same level of credibility,  
10 that type of thing?

11 A. Yes, sir.

12 Q. Okay. And I ask that because, obviously, this  
13 is a case where we've alleged that a police officer has been  
14 killed. Your wife is in security. I know it's not the same  
15 as a police officer. I want to make sure that you can  
16 follow the law and start everybody out on the same level?

17 A. Yes, sir.

18 Q. Okay. A lot of times in these type of cases  
19 you may hear from a psychiatrist or psychologist or some  
20 sort of mental health professional may be called by either  
21 side to testify in that second phase of the trial. We talk  
22 to some people who say, you know, they are worthless. I  
23 wouldn't believe a word out of their mouth. I don't trust  
24 them. And we talk to kind of another set of people that  
25 just think they walk on water. Every word out of their

1 mouth is golden. And we talk to some people who say, you  
2 know, I'm just going to start them off with that same level  
3 of credibility and see where this goes. You know, if they  
4 make sense, I'll listen to them. If they don't, I won't.  
5 Make sense to you?

6 A. Yes.

7 Q. Do you kind of fall in the middle group of  
8 people?

9 A. Yes. I'm a pretty good judge of character.  
10 If somebody is talking off the wall, I catch up with that.  
11 And if they are making sense and there's some important  
12 information that I find is important to the case, I will  
13 definitely listen to it.

14 Q. We don't want people that will close their  
15 minds because they are listening to a psychiatrist and the  
16 psychologist. Sounds like you would keep an open mind to  
17 any type witness; is that right?

18 A. Yeah.

19 Q. We've talked about the burden of proof. It's  
20 always on us. You know, the State, the DA's Office, has to  
21 prove his guilt beyond a reasonable doubt. We have to prove  
22 Special Issue 1 and Special Issue 2 beyond a reasonable  
23 doubt. This side right here, you know, they are fine  
24 lawyers. They probably will do something, but they don't  
25 have to. The burden is always on us. It never shifts to



1 them.

2                   You probably heard about the presumption  
3 of innocence. As we sit here right now, legally the law  
4 presumes Mr. Murphy to be innocent. If we all quit right  
5 now and went home, he would be found innocent. Does that  
6 make sense to you?

7           A.       Yes.

8           Q.       Okay. And it's just another way of holding us  
9 to our burden of proof. If you look on the back page of  
10 that, you will see the indictment, I guess. Again, it's  
11 probably for the wrong case, but --

12          A.       This is correct.

13          Q.       Okay. The indictment is correct. That's  
14 basically what we have to prove. We've alleged capital  
15 murder. As I have told you, we have alleged it's been  
16 committed two different ways, the murder of a police officer  
17 and the murder in the course of a robbery. That kind of  
18 breaks down into different elements that we have to prove.

19                   We have to prove that a certain person on  
20 or about a certain date took the life of another certain  
21 person in a certain way. These are what we call elements of  
22 the crime. The law requires us to prove each and every  
23 element of the crime. You know, we can't go nine for ten or  
24 eight for ten. We don't get partial credit. And if we omit  
25 one of those elements, the jury can't help us out. If we

1 miss one, the law would require you to find the person not  
2 guilty. Does that make sense to you?

3 A. Yes.

4 Q. Just to give you kind of a far out example,  
5 one of the elements we have to prove is what county this  
6 happened in. Let's say we had a capital murder case in  
7 Grand Prairie where some of it is in Dallas County and some  
8 of it is in Tarrant county. The police don't do their  
9 homework, the DA's Office doesn't do their homework, and we  
10 allege in our indictment as an element of the crime that it  
11 happened in Dallas County.

12 And when we get down here to trial and  
13 you are on the jury and all the evidence shows it actually  
14 happened in Tarrant County, on that case we haven't proven  
15 one of our elements. A lot of people say, hey, it's a  
16 technicality. I don't like it. We would get fired if we  
17 were that negligent, basically.

18 It's kind of an extreme example, but  
19 under that example, whether you like it or not or think it's  
20 a technicality, you would be forced to find the defendant  
21 not guilty because we missed an element. We don't get  
22 partial credit. We can't go nine for ten or anything like  
23 that. Does that make sense to you?

24 A. Yes.

25 Q. Is that something that you think that you can

1 do, if you have to?

2 A. I wouldn't like it, but, yes, I can do it. I  
3 would have to do it.

4 Q. It's just our burden. If we allege that the  
5 death happened from a handgun, a shooting, and the evidence  
6 shows it's a knifing, a cutting, again, you would have to do  
7 it under the law. You may not like it, but it sounds like  
8 that's something that you would have that mental discipline  
9 to hold us to our burden of proof?

10 A. I would have to, right?

11 Q. Yeah, that would be the law.

12 A. Yeah.

13 Q. Let me talk to you a little bit -- we talked  
14 to -- kind of once a person is convicted of capital murder,  
15 they are kind of sitting on that life sentence and only if  
16 the questions are answered in such a way, do they get the  
17 death penalty. If you serve as a juror, you will find out  
18 that a life sentence in a capital murder case means forty  
19 years, day for day, forty calendar or forty hard years  
20 before the person becomes eligible for parole. Doesn't mean  
21 they are entitled to it, doesn't mean they are going to get  
22 it, but that's forty years before they see a parole board.

23 The law tells you that and then tells us  
24 you can't consider that, okay, that you have to treat a life  
25 sentence as actually meaning a life sentence, because they

1 may never make parole. They may actually serve a life  
2 sentence.

3 And the reason for that is this. We've  
4 talked about how we want jurors to keep that open mind and  
5 really work through the questions. We don't want jurors to  
6 think, you know, forty years, that's just not long enough.  
7 I don't want to take that chance, so I'm going to give him  
8 the death penalty because he could parole out after forty  
9 years. Or we don't want jurors to say forty years, that's a  
10 long time. That's enough. I'm not going to bother with the  
11 questions. I'm going to give him a life sentence. Make  
12 sense to you?

13 A. Yes.

14 Q. That's why we do it. Again, we require jurors  
15 to presume that life means life. Does that make sense to  
16 you?

17 A. Yes.

18 Q. Would you do that if you were called upon to  
19 follow that law?

20 A. Yes, sir.

21 Q. Okay. Also, sometimes we try cases like this.  
22 You may have a choice of in that first part of the trial to  
23 find someone, say, guilty of capital murder or find somebody  
24 guilty of a lesser offense like aggravated robbery or find  
25 somebody not guilty. They are called lesser included

1 offenses, basically.

2 Let's say that you found that the death  
3 didn't happen, okay? We have alleged murder in the course  
4 of a robbery. The evidence shows that no one died at that  
5 point. The law would require you to find the person guilty  
6 of the lesser included offense of aggravated robbery. Does  
7 that make sense?

8 A. Well, yes, except that would be one of the  
9 areas that you were -- it would be a technicality, right?

10 Q. We wouldn't have proven what we alleged.

11 A. Right.

12 Q. We could still prove a crime, a lesser crime,  
13 like aggravated robbery.

14 A. Okay.

15 Q. Does that make sense to you? Or say we allege  
16 -- well, does that make sense? It may or may not come up in  
17 any case. We just have to talk about it in an abundance of  
18 caution.

19 A. Let's talk about it one more time.

20 Q. I'm sorry. Say we try an aggravated or  
21 capital murder case where we've alleged a murder happened  
22 during the course of a robbery. Okay?

23 A. Okay.

24 Q. And the evidence shows that the murder really  
25 didn't happen. A robbery happened, but a murder didn't.

1 Okay? So at that point you would find the defendant guilty  
2 -- or not guilty of capital murder because no murder  
3 happened. But you would find him guilty of a lesser of  
4 aggravated robbery.

5 A. That makes sense.

6 Q. In some cases you may have that option. So  
7 aggravated robbery would be a lesser included offense of  
8 capital murder, that lesser offense, because we don't know  
9 whether it will come up or not in this case. We still have  
10 to deal with it. It may come up, may not.

11 But in order to be a qualified juror,  
12 again, you would have to be able to tell us that if I did  
13 find somebody guilty of aggravated robbery, I could keep a  
14 full mind to the entire range of punishment for the  
15 aggravated robbery. The range of punishment for aggravated  
16 robbery is anywhere from five years in the penitentiary all  
17 the way up to life. Okay?

18 And, again, the law says -- we don't want  
19 you prejudging them. If you do find somebody guilty of  
20 aggravated robbery, you would listen to the punishment case  
21 and make an appropriate decision. But you haven't closed  
22 out the low end of punishment and you haven't closed out the  
23 high end. You can keep the open mind to the entire range of  
24 punishment. Make sense to you?

25 A. Yes.

1 Q. Five to life, is that something that you think  
2 you can do?

3 A. Yes, sir.

4 Q. Okay. We have run through a lot. Do you have  
5 any questions for me, Mr. Emery?

6 A. Well, I don't really think I do. I was just  
7 here to answer questions. And if I'm chosen to be on the  
8 jury, I'm sure I will find out -- I'm sure my questions will  
9 be answered, any that come up. I really don't have any  
10 right now.

11 Q. It's a little unfair. We bring you down here,  
12 we haven't explained any law to you, and get you to fill  
13 this out and haul you back down here and tell you all the  
14 law. And, you know, we know that you didn't know the law  
15 when you filled this out. So in a sense it's kind of unfair  
16 to ask you questions about it.

17 And we recognize individuals can feel any  
18 way they want about a particular law. They can like it,  
19 they can not like it, but the bottom line always is can you  
20 follow the law, can you be fair, and keep that open mind and  
21 follow the law? And it sounds like that's something that  
22 you could do, if you have to?

23 A. I believe I could.

24 Q. Okay. Mr. Emery, I appreciate your time.  
25 Thank you.

1 MR. WIRSKYE: That's all I have, Judge.

2 THE COURT: Ms. Busbee?

3 CROSS-EXAMINATION

4 BY MS. BUSBEE:

5 Q. Well, Mr. Emery, just like Mr. Wirsky said,  
6 it does seem unfair that we ask you about how you feel about  
7 things and then tell you what our law is. But we feel like  
8 if we tell people what the law is before we ask them  
9 questions, they'll tailor their answers to the law.

10 Because I know you saw how many people  
11 were there the morning that you came down. I think it was  
12 in the neighborhood of 2,500 people. Some of those people  
13 by their questionnaires -- a lot of those people by their  
14 questionnaires, were unqualified based on some of their  
15 answers, so we didn't even discuss them. We got together,  
16 the State and defense, and we went through questionnaires  
17 and we weeded out most of them, a small percentage of the  
18 folks that actually come down here to talk to us, real small  
19 percentage, of that huge group of people that we saw there  
20 that morning and I think that now you are getting a picture  
21 of why.

22 A lot of people are for the death  
23 penalty, but most people think of the death penalty in their  
24 mind as, we'll find him guilty of the capital murder and  
25 then the death penalty will follow. But that's not actually



1 how it has evolved. I mean, did you read the paper this  
2 morning?

3 A. No, ma'am, I didn't.

4 Q. Well, this is what's happened over the years.  
5 The Courts have said, it's not fair, it's not  
6 constitutional, whatever kind of roof they hang that on,  
7 it's not right to give someone a punishment of death unless  
8 certain circumstances are shown and that's the law of the  
9 land.

10 And when we get people like you down here  
11 and, frankly, you are here because both sides thought you  
12 were reasonable and intelligent and you gratified me today  
13 because you, obviously, are thoughtful and intelligent and  
14 have given this a lot of thought since May. So I like to  
15 preface my questions to you by saying, I want you to tell me  
16 how you feel because we still have lots of folks around here  
17 that -- lots you saw, that many people that afternoon, too.

18 And we each get about forty-five minutes  
19 to talk to you about some of these things and it's not going  
20 to be good for you if you have to be shoehorned into what  
21 the law is. Because, I guess what I'm trying to say, when  
22 we get people down here like you, sadly, it seems like it's  
23 a small percentage of the voters, but in any event, you are  
24 going to tell us that you are going to follow the law,  
25 obviously, because you are going to follow the law.

1 But this isn't a case of a traffic ticket  
2 or a burglary of a house or anything like that. This is  
3 literally a life or death decision. And so if we have to --  
4 if we have to do anything that bothers your conscience, one  
5 way or the other, we would like to know that because we have  
6 other folks that we could talk to. And nobody wants to put  
7 that burden on somebody who is not -- and I'll use your word  
8 "comfortable" with it.

9 So I want to talk to you a little bit  
10 about your perspective of this and let you tell me some  
11 things. Unfortunately, the State has to run through a lot  
12 of law, so you know what is being discussed. And I'm going  
13 to let you just talk to me a little bit after my five-minute  
14 introductory.

15 First of all, just something I saw in  
16 your questionnaire. Are you on commission?

17 A. Yes, ma'am.

18 Q. So if you are off the two weeks before  
19 Thanksgiving, is that going to be an undue hardship?

20 A. Yes, ma'am. Well, it's going to hurt, yeah.

21 Q. We need to know things like that because  
22 sometimes things -- I notice that your children work, but  
23 they are in college. Do you assist them in paying their  
24 college tuition bills?

25 A. Yes, ma'am.

1 Q. Sometimes there are things going on in  
2 people's lives that prey on their minds. We wouldn't want  
3 someone to come up here if their mother was dying of cancer,  
4 despite the fact that they would be the best juror in the  
5 world, because we may not have that person's full attention  
6 simply because they are human beings with a life outside  
7 this courtroom.

8 Would the -- if you were selected for  
9 this jury and you were seated on this jury, do you think you  
10 would be concerned about the amount of money that you would  
11 lose?

12 A. Yes, ma'am.

13 Q. Only you can answer this. Do you think that  
14 it might distract you to the extent that you couldn't give  
15 this your total and full attention?

16 A. Well, it just depends on what type of activity  
17 was going on during the trial. I get a lot of my business  
18 by phone call. And if I got home each evening and had a lot  
19 of phone calls to return and people need me at their house  
20 to measure and quote for different projects, very well could  
21 distract me.

22 THE COURT: Let me tell you how we run  
23 this court.

24 PROSPECTIVE JUROR: Okay.

25 THE COURT: On time. You were asked to

1 be here at 8:30, you are in the seat at 8:35. We work  
2 business hours, take an hour and a half for lunch. You can  
3 use the phone. You can use your cell phone back there. We  
4 quit between 4:30 and 5:00. We take a break in the morning  
5 and a break in the afternoon.

6 I understand that people have to use the  
7 phone to take care of business. Obviously, you can't go out  
8 and the measure during the day. You can do that after we  
9 get through here. But I'm not going to shut you down for  
10 two full weeks. Does that help somewhat?

11 PROSPECTIVE JUROR: Well, yes, yes, that  
12 does.

13 Q. (By Ms. Busbee) So you could do your  
14 measuring after business hours?

15 A. In some cases I probably could. Some cases I  
16 wouldn't be able to get in unless it was working hours.  
17 Some cases I probably could go in the evenings.

18 Q. Well, understanding now how this process  
19 works, do you think -- and only you can tell us and I don't  
20 -- we ask enough personal questions in this thing that I'm  
21 just going to ask you to search your -- search your mind and  
22 search your heart and tell us if you think that because you  
23 have to -- you are on commission sales, sitting in here for  
24 two weeks under the conditions that the Judge described  
25 would distract you to some extent?

1           A.       Well, I'm not so concerned about the mental  
2     distraction. If I was told I needed to be here, I would be  
3     here and I would do my best. The only thing, it would hurt  
4     me probably more financially than anything, to be real  
5     honest with you. Two weeks during that time, that's a busy  
6     time of the year before Thanksgiving and before Christmas  
7     because it takes about six weeks for these products to be  
8     manufactured and everybody wants them before Christmas. So  
9     it's a busy time and so I would be out financially.

10          Q.       Well, you are not saying that you are a bad  
11     person, if you are admitting that you are concerned about  
12     your job and supporting your family. That's kind of what we  
13     expected you to be when you came up here. I just, you know,  
14     there are folks that get paid for coming to jury duty  
15     because they are on salary and there are people that have  
16     money and aren't -- or are retired and they can devote all  
17     their time and attention to this.

18                   And that doesn't make you a bad juror.  
19     The only thing that makes somebody a bad juror in my mind is  
20     someone who holds back something that might concern us in  
21     the future. Because once you are on, it's irreversible.

22                   So if you really think that might be  
23     bothering you and could distract you in any way from what is  
24     going on here, we would like to know that. I don't think  
25     anybody at these tables wants anyone who is kind enough to

1 answer our questions as seriously as you have to suffer a  
2 hardship for it.

3 A. Well, I think I have answered that.

4 Q. It's going to bother you?

5 A. It's going to financially burden me, yes.

6 Q. I mean, you know, when I'm short on my bank  
7 account, it consumes my thoughts. I'm just wondering if you  
8 think it may distract you to the extent that you couldn't  
9 give, whatever, your full attention, normally it's two weeks  
10 of testimony, that might be preying on your mind to the  
11 extent that you might not be able to give it your full  
12 attention, in all honesty.

13 A. Well, I'm not going to say, yeah, I know for a  
14 fact that it would, because if my phone isn't ringing during  
15 those two weeks for some reason, then it wouldn't bother me.

16 Q. Has that ever happened?

17 A. It's kind of a roller coaster. My business is  
18 -- it gets busy and gets slow and gets busy and gets slow.  
19 And I'm anticipating that to be a busy time. And if I  
20 wasn't able to respond or be there when they needed me  
21 there, then I would more than likely be a little distracted.

22 Q. Be worried about it? I mean, I would. Okay.  
23 Just tell me, do you think that if based on the time that  
24 this trial will be held, that your financial burdens and  
25 your duties of your job would be distracting to give your

1 full attention than, say, you might be able to give us in  
2 January when your busy time was over?

3 A. Yeah, if we could do it in January.

4 THE COURT: We can't do that, sir. She's  
5 asked it 18 different ways. Anybody that serves up here,  
6 it's financially difficult. It's like paying taxes.  
7 Business is not a reason.

8 Her question is, can you listen to the  
9 testimony and judge this case on what you hear from the  
10 witness stand or are you going to be so worried about your  
11 business that you can't listen to the testimony?

12 PROSPECTIVE JUROR: Probably somewhere in  
13 the middle, quite honestly.

14 THE COURT: Very well, move on.

15 Q. (By Ms. Busbee) You will be somewhat  
16 distracted, then?

17 A. Yes, ma'am.

18 Q. Now, we talked -- I think capital murder is  
19 pretty clear in your mind as it is to most people in this  
20 instance. It's alleged to have been either murder in the  
21 course of a robbery or the murder of a police officer in the  
22 lawful discharge of his duties. And you are familiar, I  
23 guess, with the basic facts of what this case is.

24 But I'm not asking you about this case.  
25 I'm asking you about the scheme that we have in this state

1 for assessing the death penalty.

2 And so let's assume that you are sitting  
3 on a jury and you have found beyond a reasonable doubt that  
4 that person is guilty of the offense of capital murder. And  
5 the first question that you come to is that question of  
6 foreseeability. You think that person would be a danger in  
7 the future.

8 Could you tell us -- you said earlier  
9 that you felt like the fact that someone had committed a  
10 capital murder was a pretty big sign to you that they would  
11 be dangerous in the future. Would you expand on that and  
12 tell me what you were thinking when you said that?

13 A. Well, I guess I'm a little confused. Is that  
14 a two-part question?

15 Q. Well --

16 A. If I were to say that somebody was going to be  
17 a problem in the future, I would have to know a lot more  
18 about that individual and that individual's background and a  
19 lot more than I know now of the facts that we're prosecuting  
20 that individual about or I would not be able to make that  
21 judgment.

22 Q. When you -- typically -- so let's just talk  
23 about in a typical case when you are asked to find somebody  
24 guilty or not guilty. You don't get to hear all the other  
25 things about that person. It's usually just focused in on



1 what happened around the indictment, around that. Haven't  
2 -- not things that happened before or after, anything like  
3 that. Subsequent to that.

4 Let's say you found some hypothetical  
5 person guilty beyond a reasonable doubt of a capital murder.  
6 Now you go into the second phase of the trial and the first  
7 question that you have got to answer is do you think that  
8 person would be a danger in the future? Let's say you want  
9 to hear something about the defendant and his circumstances.  
10 Do you want to hear that from the defendant's table,  
11 anything from us about his history or anything that relates  
12 to that question?

13 A. Yes, ma'am. I would like to get all the facts  
14 from anybody and everybody about that individual and at  
15 least even if they are not going to talk about the past, at  
16 least all the facts that are involved in the particular case  
17 he's being tried for.

18 Q. Sure, and you can do that.

19 A. And that would be the only way that I could  
20 make an assessment on whether or not he would be a danger in  
21 the future. That's the facts that I can get at this point.  
22 I sure don't know that.

23 Q. Right. Sadly, we have to ask you questions  
24 based on a no fact situation for the most part.

25 A. Yes, ma'am.

1 Q. Do you think that because they have committed  
2 a capital murder that the defense needs to prove to you that  
3 he won't be a danger in the future?

4 A. Um, yes, ma'am.

5 Q. I mean, what the law is is one thing, but how  
6 you feel about it is what we have you up here and drilling  
7 you about. And most people take capital murder very  
8 seriously. And we would really need to hear from the  
9 defense in some way to reassure them if they were going to  
10 say that he wasn't going to be a danger in the future. Is  
11 that a fair statement of how you feel about it?

12 A. Yes, ma'am. I just think that -- I'm not sure  
13 on the law, whether it's the defense's responsibility to  
14 prove that the person is not going to be a danger to  
15 society. And that may be something that's up to each  
16 individual juror, but it's certainly something that I would  
17 have to make that assessment after hearing all the facts as  
18 a juror.

19 Q. Okay. Well, it's not my job. It's not the  
20 defense's job. The way the law is written -- and I know  
21 that you want to say that you are going to follow the law.  
22 I just want to know how you feel about it.

23 A. Well, I guess what I would have to say about  
24 that is I know I would be responsible making that decision  
25 as a juror on whether or not a person is going to be a

1 threat to society, so I need all the information I can about  
2 that particular case and that particular individual to -- in  
3 order to make that assessment because I do have to make that  
4 assessment.

5 Q. Sure. And it sounds like you are going to  
6 take it pretty seriously. I guess what I'm asking you is in  
7 your -- despite the fact that the law says I don't have to  
8 prove anything to you in the negative as far as he won't be  
9 a danger in the future, I don't have to, in other words, for  
10 you to decide that he wasn't going to have to be -- we  
11 usually have them up there, so it's easy to refer to them.

12 But in order for you as a juror to say  
13 this man will not be a danger in the future, you need to  
14 hear something from us to reassure you, because that's just  
15 the way you feel about it?

16 A. No, ma'am.

17 Q. Okay. The second Special Issue, has to do  
18 with anticipation. We were talking about in this case a  
19 theory that if the defendant was a party to an offense. In  
20 other words, a participant of some kind, but as they have  
21 said, not actually someone who pulled the trigger.

22 What sort of facts can you think of that  
23 would let you know or satisfy you that someone would have  
24 anticipated or would have anticipated, not should have  
25 anticipated, but did anticipate, that this capital murder

1 would occur? What sort of things would you need to hear?

2 A. I believe if everybody was armed with a weapon  
3 would be a pretty strong red flag. You know, I'm just going  
4 cold blinder, but any kind of preplan about we're going to  
5 do this, we're going to be here at this time, we're going to  
6 go this, you are going to do that, there may be a scheme  
7 written down on paper somewhere. I don't know. But  
8 anything like that that was preplanned. Obviously, if  
9 everybody involved was armed -- gosh, I'm having a hard time  
10 thinking of all the little things. But there are a lot of  
11 little things that to me would put up a red flag that they  
12 were anticipating some violence.

13 Q. Okay. So you mean anticipating or planning a  
14 robbery or anticipating planning a murder?

15 A. Probably both.

16 Q. Well, let me just make sure I have this -- I  
17 think you are telling me that you would -- that you  
18 understand -- we're not looking at them, so let me double  
19 check. The question is anticipated that the murder would  
20 occur.

21 A. Okay.

22 Q. And would your answer be the same not  
23 anticipate the crime would occur, but anticipate that a  
24 murder would occur?

25 A. Well, I still think being armed would be a red

1 flag that, you know, not too many people carry a weapon  
2 without using it and usually when they use it, there's a  
3 death involved is the way I see it.

4 Q. Okay. Now, let's take you to the mythical  
5 hypothetical capital murder jury that you are sitting on and  
6 you have found beyond a reasonable doubt that this person is  
7 guilty of capital murder as a party. And you found that  
8 they may be a danger in the future and you have found that  
9 they anticipated that a death would occur and all these  
10 things you have found beyond a reasonable doubt.

11 Do you remember what Mr. Wirskye talked  
12 to you about, this safety valve thing? It's kind of a,  
13 without sounding too girly, to me mitigation is difficult  
14 to explain, but I like to say mitigation softens your  
15 feelings or softens your heart and aggravating hardens your  
16 heart toward an individual.

17 A. Yes, ma'am.

18 Q. Would you be able to, after having decided in  
19 a case of capital murder that someone was -- had done it,  
20 they were going to be dangerous, and they knew this murder  
21 was going to happen, could you consider answering that  
22 question that they should not get the death penalty? I mean  
23 you, yourself, personally, do you think that you could do  
24 that or do you think you just couldn't?

25 A. Well, I think that I could, depending on what

1 the -- what was the term again? Not aggravated, but --

2 Q. Mitigating.

3 A. Mitigating. If there was some strong  
4 mitigation or whatever the word would be, yeah, I could  
5 consider.

6 Q. Because what we want -- at least I'm speaking  
7 for this table, is someone who is not just a knee jerk, I'm  
8 going to give someone the death penalty. No matter that  
9 they really understand what we're talking about here and  
10 going to give this table a fair shake on, under the  
11 statutory scheme under the law, the way the law is, not the  
12 way we think about it when we are sitting around drinking  
13 coffee in the morning with our friends, just talking about  
14 the news.

15 A. The mitigation would have to be substantial.  
16 I mean, it would have to be something without a shadow of a  
17 doubt or that sort of thing proven to me. But, yeah, if  
18 there was something -- can't think of a good cause, but a  
19 mental retardation or something, that would be something I  
20 have to consider.

21 Q. See, mental retardation takes the death  
22 penalty away anyway, so we wouldn't be talking about mental  
23 retardation.

24 A. Something along those lines. You know what I  
25 mean, I think.

1 Q. I want to be sure you understand that.

2 A. I didn't know that, no. And I know it now.

3 Q. We could go through this all day long, but I'm  
4 trying to get a feel for you. And, as I say, we don't want  
5 to torture people. We have more people down the road we can  
6 use, if there's some problem that you have with the law or  
7 service. And as I understand it, the only problem that you  
8 have is you will be halfway distracted by your business  
9 problems from full attention to the facts of the case?

10 A. Yes, ma'am.

11 Q. I don't necessarily or know at this point what  
12 is going to happen in this trial in some respects.  
13 Everybody has heard that you have the right not to testify.  
14 You don't have to -- I hate to use the word "incriminate",  
15 but you don't have to testify in a trial. You being any  
16 person on trial in this country.

17 Would that concern you on the issue of  
18 punishment, if you hadn't heard from the defendant himself?

19 A. Me, personally, I think it probably would.

20 Q. You would need to hear?

21 A. I'm a pretty much of a people person and I've  
22 always just talked to people eye to eye. And, yeah, I would  
23 want to hear from a defendant.

24 Q. Okay. Well -- and that's why we bring you up  
25 here to find out what your true feelings are. And you don't

1 -- are you saying you wouldn't feel comfortable answering  
2 those questions without having heard from the defendant like  
3 mitigation and dangerousness and --

4 A. I think it would be harder to answer those  
5 questions without hearing from the defendant, but I  
6 understand that that's what y'all do is speak for the  
7 person, so we still have to take the same information and  
8 dissect it and make our circumstances. But just me  
9 personally, I would -- I would just pick up on some things I  
10 wouldn't pick up from if I heard directly from an  
11 individual, you know, from the person.

12 Q. I'm trying to think of how to ask this  
13 properly. So in reality, if the defendant didn't testify,  
14 it would make a difference to you in answering some of the  
15 Special Issues just in yourself?

16 A. I'm sorry, repeat that?

17 Q. Well, if the defendant didn't testify, not my  
18 defendant, but in a case where you are being asked to assess  
19 a death penalty, if the defendant didn't testify, of course,  
20 depending on the facts which we're not talking about now, it  
21 might weigh against them because you need -- there would be  
22 something you would want to know before you could answer  
23 some of those questions in his favor. It's just how --

24 A. I can't answer that without --

25 Q. Answer it with what you want to say.



1           A.       It would just -- it would -- I think it would  
2       make it a little clearer for me to answer those questions, a  
3       little easier for me to answer those questions hearing from  
4       the defendant. Not that I couldn't, if I didn't, but I  
5       think it would go a long ways with me if I did hear from the  
6       defendant.

7           Q.       Okay. So it would -- in a hypothetical case,  
8       if the defendant didn't testify, your feeling is that you  
9       might hold it against him because you would want to know  
10      some of these things?

11          A.       No, ma'am, I didn't say that.

12          Q.       Then tell me. I'm not getting the sense of  
13      it. You said that you would need to hear from him?

14          A.       No, it would be -- I think the information  
15      that the jury would get hearing from the defendant would be  
16      something that the defense couldn't -- couldn't put out  
17      there to the jury.

18          Q.       Okay. In other words his mouthpiece, so to  
19      speak, his lawyers, can't tell you things that the defendant  
20      -- about the defendant. You know, you made the comment that  
21      we speak for our client, but you would really prefer to hear  
22      the defendant, look him in the eye, and hear the tone of his  
23      voice, to assess his character, I guess, is what you are  
24      saying, right?

25          A.       Yes. I would like to hear from the defendant,

1 not necessarily to assess his character, but to hear what he  
2 has to say and to pick up on vibes, if you will, and to just  
3 hear what he has to say.

4 Q. And if that person should choose for whatever  
5 reason not to testify, would that be something that you  
6 would think about when you were answering these questions?  
7 Would it weigh against him?

8 A. I don't think -- I don't think it would weigh  
9 against him. I think there would be a little bit of a void  
10 in putting the whole package together in answering the  
11 questions that we would have -- that I would have to put  
12 together. There would be a little bit of a void there, I  
13 believe.

14 Q. So, in other words, if the defendant didn't  
15 testify in one of these situations, maybe, and you have been  
16 -- correct me if I'm not saying the position right, so go  
17 ahead and do that if I'm not. But you are saying without  
18 that, it would be a little bit easier for the State to meet  
19 its burden of proof?

20 A. I don't know.

21 Q. Just tell me -- just --

22 A. I don't know that it would help the State,  
23 either. I'm just talking a juror, and me personally, I  
24 can't speak for any other juror --

25 Q. Sure.

1           A.       -- I have to take all the facts and I've got  
2 to make three decisions at some point in time. And I  
3 believe it would make those decisions easier and there  
4 probably -- and maybe could be some more information that  
5 would come about directly from a defendant's person rather  
6 than his supposed persons.

7           Q.       Sure.

8           A.       And to me that would be -- I would not want to  
9 miss that day. You know what I mean?

10          Q.       So you are saying it would be important to you

11 --

12          A.       Yes, ma'am.

13          Q.       -- to hear from the defendant?

14          A.       Yes, ma'am.

15          Q.       Well, I think I have tortured you enough,  
16 Mr. Emery.

17                   MS. BUSBEE: I'll surrender the juror.

18                   THE COURT: I have one question to follow  
19 up on the last issue you stopped in midsentence. The LAW on  
20 the issue of a person testifying, the law is the Fifth  
21 Amendment of the United States Constitution, guarantees that  
22 he does not have to testify.

23                   PROSPECTIVE JUROR: Yes.

24                   THE COURT: You have told me it would  
25 make your job more difficult. You have told us that you

1 would like to hear from the defendant. But her question and  
2 the question of the law is the law says he does not have to  
3 testify. And if he chooses not to testify, I will instruct  
4 you that you cannot and must not allude to that fact  
5 throughout your deliberations or take it into consideration  
6 for any purpose whatsoever.

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: Can you do that?

9 PROSPECTIVE JUROR: I don't know. That's  
10 a pretty big issue to me.

11 THE COURT: Pretty big issue.

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: You would like to hear from  
14 him?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Make your job more difficult,  
17 but the law says he doesn't have to testify.

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: Are you going to hold it  
20 against him, if he chooses not to testify?

21 PROSPECTIVE JUROR: I wouldn't say I  
22 would hold it against him, maybe against the judicial  
23 system. I don't know. But there's going to be a void  
24 there.

25 THE COURT: Sure there's going to be a

1 void.

2 PROSPECTIVE JUROR: I would like to hear  
3 from him and it's going to be an issue that's going to be  
4 hard to overlook, if I'm asked to answer these three  
5 questions and possibly convict somebody to a life sentence  
6 and not even be able to hear from them. It's going to be  
7 difficult for me.

8 THE COURT: Difficult is fine.

9 PROSPECTIVE JUROR: It's going to be  
10 difficult for me to not allude to it or think about it to  
11 answer your question. But I wouldn't hold it against him.

12 THE COURT: Thank you, sir. Wait for us  
13 outside. We'll have you back in just a minute.

14 [Prospective juror out]

15 THE COURT: What says the State?

16 MR. WIRSKYE: State has no challenge for  
17 cause.

18 MS. BUSBEE: Are you asking me? Your  
19 Honor, I challenge the juror for cause. I don't believe  
20 this juror can adequately afford my client his Fifth  
21 Amendment privilege not to testify. He stated to the Court  
22 it would make a difference to him and his decision as to  
23 whether or not he would give a life or death sentence. He  
24 said ever which way you could he would consider it and it  
25 would be negative to the defense.

1 And I am challenging him for cause based  
2 on his inability to honor the defendant's Fifth Amendment  
3 privilege against self-incrimination.

4 THE COURT: Let me have a few minutes.

5 (Recess)

6 THE COURT: The Court has been presented  
7 with a typical vacillating juror back and forth, back and  
8 forth. I can put this man on the jury, find him to be  
9 qualified very easily. But I'm real, real careful about my  
10 constitutional issues. I gave him the law and he just, in  
11 my mind, being honest and would not be able to give Mr.  
12 Murphy his constitutional right against self-incrimination.

13 As much as I don't want to, I can't let  
14 the fact we spent an hour and a half with this man and just  
15 punt. I'm going to grant your challenge for cause. Take  
16 ten minutes and we'll start on the next one. Bring him back  
17 in.

18 [Prospective juror in]

19 THE COURT: Mr. Emery, thank you for your  
20 service today and your honesty to the questions. You are  
21 not going to be seated on this jury. Thank you, sir. You  
22 are free to go.

23 (Recess)

24 [Prospective juror in]

25 THE COURT: Erica Marie Hefner. How are

1 you?

2 PROSPECTIVE JUROR: I'm good. How are  
3 you?

4 THE COURT: Do you go by Erica or Marie?

5 PROSPECTIVE JUROR: Erica.

6 THE COURT: I'll be sure and get my  
7 computer corrected and lined up here. Thank you for being  
8 here. Did you have enough time this morning to read over  
9 the juror orientation guide several times? I know I put a  
10 lot of law in front of you and we don't expect you to be  
11 able to understand it all, just by reading it. The  
12 attorneys are going to spend some time with you going over  
13 the law and provide some examples so you can make it a  
14 little more understanding. Don't think you've got to have a  
15 law degree to come here and be a juror in this case. All we  
16 need to remind you is to be honest.

17 PROSPECTIVE JUROR: Okay.

18 THE COURT: If you don't understand the  
19 questions, say I don't understand or give me another example  
20 and they'll be happy to help you out that way. My job is,  
21 A, do you understand the law? Second is can you follow the  
22 law? We don't want you to be intimidated. It's somewhat of  
23 an unusual situation for a citizen to come in and be on the  
24 witness stand and look at all these lawyers here. That's  
25 the only way that we can do it. It's not like a big group

1 where you were in with 800 people that Friday morning. It's  
2 something that's very personal. They want to get to know  
3 your feelings, how you think.

4 The only question that I have for you is  
5 you have read the trial shall begin on November 10th.

6 PROSPECTIVE JUROR: Mine said the 11th,  
7 but, okay.

8 THE COURT: Does it say November 10th on  
9 the front page?

10 PROSPECTIVE JUROR: Yes. It's okay.  
11 Either date is fine.

12 THE COURT: Can you serve us for two  
13 weeks?

14 PROSPECTIVE JUROR: Uh-huh.

15 THE COURT: Thank you so much.

16 Mr. Shook.

17 ERICA HEFNER,  
18 having been duly sworn, was examined and testified as  
19 follows:

20 DIRECT EXAMINATION

21 BY MR. SHOOK:

22 Q. Ms. Hefner, I'll be asking you questions on  
23 behalf of the State and we're just looking for your honest  
24 answers and opinions. Have you ever been down on jury duty  
25 before?



1 A. No.

2 Q. First time?

3 A. Uh-huh.

4 Q. Usually in most cases the jury selection is  
5 done in a big group.

6 A. Right.

7 Q. But since it's a capital murder case in which  
8 the death penalty is being sought, we talk to each juror  
9 individually. Gives you an opportunity to discuss any  
10 questions at any time. Okay?

11 A. Uh-huh.

12 Q. You have given us a lot of information on your  
13 questionnaire. We appreciate that. I'm going to follow up  
14 on some of that and I'm going to ask you a lot of questions  
15 about the death penalty and how you feel about that and some  
16 of the laws that apply.

17 A. Okay.

18 Q. You grew up here in the Dallas area?

19 A. Yes, I did.

20 Q. Did you grow up in Dallas itself?

21 A. Uh-huh.

22 Q. What area of town did you grow up in?

23 A. The White Rock area.

24 Q. What school did you go to?

25 A. Bishop Lynch.

1 Q. And the only time out of Dallas is when you  
2 went to a school down in Austin?

3 A. I went to San Marcos to school and then I  
4 lived in Austin for several years after that. I just moved  
5 back to Dallas in March.

6 Q. What brought you back to Dallas?

7 A. My company.

8 Q. Okay. The 24-Hour Fitness?

9 A. Uh-huh.

10 Q. What do you do for them?

11 A. Um, I do a lot of things. Right now I do some  
12 corporate sales and some personal training and I'm in  
13 management training, so I kind of get a wide scope.

14 Q. So you look at everything?

15 A. Uh-huh.

16 Q. And you told the Court that the two-week time  
17 period that you would be required to be down here wouldn't  
18 be a problem?

19 A. No.

20 Q. Now, let me ask you, you know, we can't get  
21 into the facts of the case, but we gave a few facts in the  
22 questionnaire regarding this case when it happened back at  
23 the Oshman's on December 24 of 2000.

24 A. Uh-huh.

25 Q. Do you recall any of the facts surrounding

1 this case at all?

2 A. No. I was graduating from college in December  
3 of 2000 so I had a lot of other things on my mind. I wasn't  
4 really current with current events.

5 Q. So you didn't follow it any at any time?

6 A. Huh-huh.

7 Q. You don't know anything?

8 A. No.

9 Q. Let me ask you how you feel, generally, about  
10 the death penalty? Are you in favor of it as a law?

11 A. Um, yes.

12 Q. Tell me what purpose you think the death  
13 penalty serves.

14 A. I think it serves a purpose on an individual  
15 basis. If by the law it is warranted, then that's what  
16 needs to happen.

17 Q. Okay. Is the death penalty something you have  
18 always believed in as a law?

19 A. Um, being 24, always believed in it isn't that  
20 long, but pretty much, yeah.

21 Q. What do you think led you to that belief?  
22 Just the way you were raised or --

23 A. Um, I'm not sure. I've -- I've always  
24 believed that whatever laws we have in place have been put  
25 in place by very educated and well experienced people and so

1 if that's the law we have in place, then that's what needs  
2 to be upheld.

3 Q. If it were up to you, let's make you Governor  
4 for a day and you get to decide which laws we have, would  
5 you have a death penalty statute?

6 A. I would have to look at the amount of  
7 criminals and what type of criminals that we would have in  
8 our state and what's happening to them now and money as to  
9 how much it's costing to keep them in jail for life. Or  
10 there are a lot of other statistics. I would have to look a  
11 lot.

12 Q. For what you know about the type of crime we  
13 have in Texas, do you think that we should have the death  
14 penalty?

15 A. I don't know enough to say yes or no.

16 Q. Okay. Any cases you have followed in the  
17 media that you think warrant the death penalty or would be  
18 the types of cases you think should be considered for the  
19 death penalty?

20 A. No.

21 Q. Well, what comes to mind when you think of a  
22 death penalty case? What type case should be at least  
23 something the death penalty should be looked at?

24 A. Um, I remember the yogurt shop murders.

25 Q. Down in Austin?

1 A. Yeah.

2 Q. That was pretty --

3 A. Gruesome.

4 Q. Gruesome and got a lot of publicity. If it  
5 were up to you, would you just reserve the death penalty for  
6 where a life was taken or would you have it for other  
7 problems like rape and stuff like that?

8 A. Mainly for when a life is taken.

9 Q. In your questionnaire -- and I know you don't  
10 have the questionnaire in front of you. It's been a while  
11 since you filled it out. But we asked a lot of questions.  
12 And on one we asked what's important to you in deciding  
13 whether a person receives the death or life sentence? And  
14 you put several things, mental state of both victims and  
15 suspected murderer at the time, chain of events leading up  
16 to the supposed crime, and the scientific evidence in place.  
17 What were you thinking there? Go a little farther.

18 A. As far as mental state, was the person who  
19 committed the crime mentally altered, be it by a substance  
20 or by their own physical and mental capacity? What was the  
21 other person who was, obviously, killed doing at the time to  
22 provoke that?

23 Q. What could be important about that?

24 A. Well, I don't know if the person was provoked  
25 to shoot the person, the other person.

1 Q. Okay. So if they provoked it in some way?

2 A. Right.

3 Q. All right. Shootout between somebody and --

4 A. Right.

5 Q. Okay. What about the chain of events leading  
6 up to the supposed crime? That's just all the facts  
7 surrounding the crime?

8 A. Right.

9 Q. How about scientific testimony on placement?  
10 What did you mean by that?

11 A. I was thinking more if there was more than one  
12 person -- candidate, that could have been the murderer as  
13 far as gun position and bullet entry and that sort of thing.

14 Q. Let me follow up on that and talk to you  
15 generally about something. In Texas the death penalty is  
16 only reserved for certain types of murder cases, first of  
17 all, murder that occurs with another aggravating factor.

18 I could pull a gun out and shoot  
19 Mr. Wirskye in the temple because I didn't like what he was  
20 wearing that day or something he said to me, laugh about it,  
21 but I couldn't get the death penalty. Okay. The death  
22 penalty is reserved for murders that occur during the course  
23 of a felony, rape, or robbery, you break into someone's  
24 home, arson, or kidnap or murder of specific individuals  
25 like a police officer on duty, prison guard on duty, fireman

1 on duty, murder of a child under the age of six, murder of  
2 more than one individual, several victims, or a murder for  
3 hire, someone like a hitman.

4 Those are specific types of cases that  
5 the death penalty is reserved for or at least for  
6 consideration. Do you disagree with any of those types of  
7 cases?

8 A. No.

9 Q. Do you feel those are all fair types of cases  
10 for consideration?

11 A. Uh-huh.

12 Q. Now, when we think of the death penalty, the  
13 natural assumption one makes or when we think of the person  
14 that actually causes the death, the triggerman, that's just  
15 normal. But the death penalty or capital murder, like any  
16 other crime, there could have been more than one person,  
17 sometimes, carries out a crime. It's an issue we talk  
18 about.

19 An example we give sometimes is Mr. Wirskye  
20 and I here, we might decide we want to go rob a bank and we  
21 get another friend of ours to be the getaway driver to wait  
22 outside to warn us if the police are coming. We go in. I  
23 have guns. Mr. Wirskye doesn't have a gun. His role is to  
24 take a bag out on one side. And I pull the gun on the  
25 tellers and threaten them. He will gather the money up and

1 I will cover. Okay?

2 But let's say we pull that plan off. I get  
3 mad or maybe I think, you know, Mr. Wirskye warns me that  
4 one of them is going to hit an alarm. I shoot one of the  
5 tellers and kill them. I mean to. We run off, but we get  
6 captured.

7 I can, obviously, be tried for capital murder  
8 and could receive the death penalty because I pulled the  
9 trigger and caused someone's death in the course of a  
10 robbery. Common sense. Do you agree with that?

11 A. Right.

12 Q. The law says that because Mr. Wirskye and the  
13 getaway driver assisted me in the crime, they could, under  
14 some particular facts, could, also, be prosecuted for  
15 capital murder and could even receive the death penalty,  
16 even though they are not the triggerman.

17 Now, that's a point people, some jurors,  
18 agree with some of that and it's fine if you do or don't.  
19 Some people, if it were up to them, would reserve the death  
20 penalty for the triggerman, have no problem with that. They  
21 do have a problem with the party or the accomplice who's not  
22 the triggerman and personally could not assess the death  
23 penalty if it was an accomplice or something where they  
24 would draw the line and they couldn't do it.

25 And if you feel that way, it's fine, too.



1 Some people don't have -- how do you feel about the  
2 nontriggerman situation, the accomplice, and the death  
3 penalty?

4 A. I wouldn't be really quick to assign the death  
5 penalty to a nontrigger party. However, if the event led to  
6 shooting an armed and identified police officer, I might be  
7 more willing to assess the death penalty just because of who  
8 was killed.

9 Q. And that's because of the particular type of  
10 victim?

11 A. Right.

12 Q. Okay. So in a police officer situation, if  
13 someone, an accomplice, the example I gave the police  
14 officer was somehow involved, maybe in the bank or  
15 something, and I killed him, you think it would be fair to  
16 prosecute Mr. Wirskye for the death penalty and could  
17 receive it as an accomplice because he's assisting me in  
18 that offense?

19 A. I don't know. I don't -- I don't think I  
20 would, actually, just because he didn't kill him.

21 Q. Okay. So thinking about it a little further,  
22 then, maybe if it were up to you, if you were in charge of  
23 the law, you would reserve the death penalty just for the  
24 triggerman?

25 A. Yes.

1 Q. Not the accomplice?

2 A. Yeah.

3 Q. Okay. It's fair to feel that way. I know you  
4 probably haven't thought about these subjects in great  
5 detail, I hope you haven't, at 24-Hour Fitness. But  
6 thinking about it now, that's how you feel?

7 A. Yes, yes.

8 MR. SHOOK: Judge, could we approach?

9 THE COURT: You may.

10 (Bench conference)

11 THE COURT: Ms. Hefner, we appreciate  
12 your time and service to the Court. At this time the  
13 parties have agreed to excuse you. You will not be on this  
14 jury.

15 PROSPECTIVE JUROR: Okay.

16 THE COURT: Okay. Thank you so much.

17 [Prospective juror out]

18 THE COURT: Ask Mr. Ingle to come in.

19 [Prospective juror in]

20 THE COURT: Good morning, Mr. Ingle, how  
21 are you?

22 PROSPECTIVE JUROR: Fine. How are you,  
23 sir?

24 THE COURT: I have your name as Marty  
25 Delbert Ingle. What name do you go with?

1 PROSPECTIVE JUROR: Marty with a D?

2 THE COURT: M-A-R-D-Y. And the jury  
3 summons came up M-A-R-T-Y and I couldn't tell if it was  
4 M-A-R-D-Y. And I said, well, I need to ask him about that.

5 PROSPECTIVE JUROR: On my birth  
6 certificate it will probably say T, but my mom said I should  
7 spell it with a D and girls spell it with a T, so change it  
8 on my birth certificate is too much, but I spell it with a  
9 D.

10 THE COURT: I have to stick with what  
11 your birth certificate says. But the Texas pronunciation is  
12 more of a Marty. But I'm going to leave it with a T, if  
13 that's what your birth certificate is. All right?

14 PROSPECTIVE JUROR: That's fine.

15 THE COURT: Mr. Ingle, have you had an  
16 opportunity to read the orientation guide there for you? I  
17 have provided you a copy of that short questionnaire that  
18 you filled out for us in May. If they need to refer to a  
19 specific question and you need to review your answer, you  
20 have it there before you.

21 Today the lawyers will go over the law  
22 more in detail. Obviously, when I gave you that guide,  
23 that's a lot of law to put on someone and expect you to  
24 understand how it all interlinks. The lawyers are going to  
25 speak to you about it and give you examples to where it will

1 be easier to understand how it works and the process that we  
2 have to go through.

3 What you need to be able to do for us is  
4 just tell us the truth. If you don't understand something,  
5 tell us, and they will try to explain it. If they can't  
6 explain it or they get you confused, I'll get in the middle  
7 of it.

8 Only question I have for you, this trial  
9 will begin on November 10th, last for approximately two  
10 weeks and I don't expect two full weeks, but it will be a  
11 two-part process. You will have breaks in the morning and  
12 certainly for lunch and the afternoon. You will be able to  
13 use the phone during that period of time. You are not going  
14 to be sequestered. You won't be locked up at night in a  
15 hotel room unless it's an extraordinary situation and that  
16 would only be for one night, if deliberations carry over.

17 So that's just -- I don't have a crystal  
18 ball, but that's what I anticipate that the trial will be  
19 able to do for us. Do you have any problems serving the  
20 Court for those two weeks?

21 PROSPECTIVE JUROR: Well, I'm a contract  
22 worker and when I'm not there, I don't get paid. And that's  
23 a substantial amount of time that would affect me  
24 financially.

25 THE COURT: Yes. Everybody who comes in

1 here, I've had chairmen of the board of Fortune 500  
2 companies and his time was worth thousands of dollars an  
3 hour. I understand that. I've had doctors, I've had  
4 lawyers -- lawyers are the worst ones, okay, because they --  
5 lawyers, the whole deal is by the hour. And we understand  
6 it's going to be a financial hardship for anyone to sit on  
7 this case. I can't let you -- I can't let business reasons  
8 excuse someone from the jury service. But I will tell you  
9 we understand that and I will work -- let you work around as  
10 best we can.

11 The question that the lawyers have is, if  
12 your particular financial situation will be so overburdened  
13 that you would not be able to sit in this courtroom and  
14 listen to testimony in this case, that's the real core  
15 issue.

16 PROSPECTIVE JUROR: Um, well, I don't  
17 know about that, but --

18 THE COURT: See, what it gets down to  
19 really is it going to be so overburdened --

20 PROSPECTIVE JUROR: I won't like it.

21 THE COURT: No. I can't find anybody  
22 that likes being down here, trust me. And if someone does,  
23 they -- we usually don't want them, you see, because they  
24 have an axe to grind.

25 PROSPECTIVE JUROR: Right.

1 THE COURT: Right. So you see the  
2 position we're in?

3 PROSPECTIVE JUROR: Right.

4 THE COURT: Nobody wants to be involved.

5 PROSPECTIVE JUROR: Actually, if I was  
6 working for the company, got paid, it wouldn't bother me if  
7 they were paying my time. But in this particular case, it's  
8 a different situation. I usually work for a company with  
9 benefits and I don't have that at this point in time, so  
10 that's the problem. I wouldn't mind, but to sit here and  
11 knowing that it takes a pretty good -- anyway, you know the  
12 story. It probably wouldn't detract me from the issues, but  
13 I don't like it.

14 THE COURT: I understand.

15 PROSPECTIVE JUROR: You know.

16 THE COURT: Trust me, I understand. I  
17 will do all I can do to not waste your time, get you in and  
18 get you out and get you down the road. Fair enough?

19 PROSPECTIVE JUROR: Sure, I guess.

20 THE COURT: Thank you, sir. Mr. Wirsky?

21 MARTY INGLE,  
22 having been duly sworn, was examined and testified as  
23 follows:

24 DIRECT EXAMINATION

25 BY MR. WIRSKYE:

1 Q. May it please the Court? Mr. Ingle, how are  
2 you?

3 A. Fine.

4 Q. We're sorry about that work situation.

5 A. That's all right.

6 Q. We'll talk about it in just a second, but my  
7 name is Bill Wirskye. I'm going to be the Assistant  
8 District Attorney that's going to visit with you the next  
9 few minutes. Where is Mark Tree, (phonetic) Arkansas?

10 A. Close to Memphis, a little north of the Delta  
11 land.

12 Q. I have people in southwest Arkansas, but I  
13 have never heard of Mark Tree.

14 A. The flat side.

15 Q. How long did you live there?

16 A. About 18, 19, 20 years.

17 Q. And then you came here in the Metroplex kind  
18 of --

19 A. I came to Houston in '79 and then up to  
20 Dallas.

21 Q. What type of work do you do? You told us you  
22 are contract now and I notice it said Ratheon?

23 A. TI slash Ratheon, for 20 years.

24 Q. Your free time, what do you like to do in your  
25 free time?

1 A. Relax.

2 Q. Looks like --

3 A. Pardon?

4 Q. It looks like you play music; is that right?

5 A. Yeah, I like to do that.

6 Q. What type of music do you play?

7 A. Country, blues, and gospel, not necessarily in  
8 that order.

9 Q. We read a lot of people -- you listen to 95.9  
10 (phonetic)?

11 A. That ought to tell you something there.

12 Q. We know no one wants to be down here,  
13 Mr. Ingle. I know it's a big inconvenience to everybody,  
14 financially and otherwise. As the Judge said, the bottom  
15 line question is are you going to let something that's going  
16 on in your life or in your mind affect you listening to the  
17 testimony in the trial and affect the decisions you may  
18 make? You know, if it's that great a deal, it's that great  
19 a burden to you where it might affect your decisions in the  
20 case, that's what we need to know about it.

21 A. It just dawned on me, I'm probably in a  
22 position where I could work a second shift, if I had to. So  
23 I guess you could take it out of me. It wouldn't bother me  
24 so much. It would be a long day.

25 Q. It would be a long day. Neither side wants



1 you to think about something else or be sleepy from working  
2 a different shift. We don't want you to miss something in  
3 the courtroom and that type of thing. Do you think it's  
4 going to be that type situation?

5 A. I'm a Judge Judy fan, so there you go.

6 Q. All right.

7 A. Pay attention.

8 Q. So you think that you could just make your  
9 decision based on what you hear in the -- on what you hear  
10 in the courtroom?

11 A. Yes.

12 Q. I want to visit with you a little bit about  
13 how you feel about the death penalty, since this is a case  
14 where we're seeking the death penalty. Talk to you a little  
15 bit about some of the information in your questionnaire that  
16 I think you have got in front of you and then, finally,  
17 maybe talk a little bit about the law that might apply in  
18 this case. So are you okay up there?

19 A. It's tight.

20 Q. Now, you have told us that you generally are  
21 in favor of the death penalty; is that right?

22 A. Generally in favor of the death penalty would  
23 be a correct statement.

24 Q. Can you tell us what purpose you think it  
25 serves society, having the death penalty?

1           A.       Well, I would hope it would make somebody  
2 think twice before they just kill somebody, you know.

3           Q.       Okay. Deterrent effect?

4           A.       Exactly, deterrent.

5           Q.       Is there any particular type case that comes  
6 to mind that you think of when you think of an appropriate  
7 case for the death penalty or capital punishment?

8           A.       Just deliberated murder and, you know, I am --  
9 I believe in our cops, you know, I think they ought to be  
10 protected at all costs.

11          Q.       Oh, sure.

12          A.       I believe they're special people.

13          Q.       And almost everyone we talk to feels that way.  
14 And, you know, a lot of people feel strongly about it like  
15 you do and the -- I guess the overriding concern in all  
16 this, we talk to a lot of people and we get them to put  
17 their views in the questionnaires. And you can be strongly  
18 in favor of the death penalty or you cannot be in favor of  
19 the death penalty. You can have your own personal views and  
20 opinions, thoughts.

21                   The bottom line to all of this is would  
22 you be able to put that aside and be able to follow the law  
23 and do what the law says? And as we go along, I'm going to  
24 ask you a lot of those type questions. And you may not know  
25 that in Texas we only reserve a certain portion or certain

1 subset of murders for the death penalty.

2           You know, let's just say Mr. Shook here,  
3 I've been working with him on this case for a long time and  
4 I decided that I don't like him. I deliberate on it a while  
5 and plan it and I come into court one morning and shoot him  
6 dead in front of everybody in the court. If that's the  
7 case, that particular type murder wouldn't be subject to the  
8 death penalty. Okay?

9           One way to think about capital murder is  
10 it's always a murder plus something else. Kind of like you  
11 said, a special person, police officer on duty, firefighter  
12 or prison guard or a young child under the age of six or  
13 cases where an intentional murder is committed during the  
14 course of another felony like robbery or burglary. Somebody  
15 breaks into your home and kills you is capital murder.  
16 Somebody holds up the 7-Eleven down the street and kills the  
17 clerk, that type of thing is capital murder.

18           Does that kind of make sense to you, the  
19 scheme we have?

20           A.       Somewhat, yeah.

21           Q.       We talk to a lot of people that say, hey, I  
22 think it should be an option for all murder cases. But in  
23 Texas we reserve it for that certain or particular type of  
24 murder.

25           A.       I didn't know that.

1 Q. Most people don't. We talk to a lot of  
2 people. Some would like to expand the available group of  
3 murder cases, you know, that it would be available for and  
4 some want to shrink it. Sounds like you might be in favor  
5 of making it available in more different types of murders;  
6 is that right?

7 A. Possibly. I mean, if you thought -- if you  
8 were going to kill that guy right there just like you said  
9 you were going to do, I don't know, you know, you need to  
10 go, too.

11 Q. And I may have been to prison five or six  
12 times, may be the baddest of the bad. But, you know, I just  
13 want to make sure.

14 A. With you, that's just my thought on it for  
15 whatever. I don't deal with this on a daily basis and don't  
16 plan on it. So that's why you guys are there.

17 Q. And I hope you hadn't spent too much time  
18 thinking about it.

19 A. I haven't and don't care to.

20 Q. I just want to let you know, it's okay to have  
21 your views.

22 A. I don't know what you were talking about. You  
23 drew the line and this gets this and this don't. I didn't  
24 know that.

25 Q. But like I said, regardless of what your view

1 is, the bottom line question is always going to be can you  
2 kind of set that aside and just follow the law that the  
3 Judge gives you and that type thing? So that's probably a  
4 question I'm going to be asking you a lot as we visit and  
5 stuff.

6 Let me ask you this. Usually when you  
7 think of that type of capital murder you think of one  
8 person, I guess, going into a 7-Eleven, holding up the  
9 clerk, shooting and killing the clerk, and getting off with  
10 the money. But oftentimes crimes are committed by more than  
11 one person. You know, maybe a group of guys or gang of guys  
12 get together and commit the crime.

13 In Texas the death penalty is not  
14 necessarily reserved just for the person that actually pulls  
15 the trigger. Okay? What I mean by that is depending on the  
16 facts and circumstances, even though I'm a nontriggerman, I  
17 could still potentially face the death penalty.

18 Some people say, well, they are not  
19 really in favor of that. They can just draw a bright line  
20 and say the death penalty is only for people that actually  
21 pull the trigger and cause the death. And some people say,  
22 you know, I just keep an open mind about that and look at  
23 the nontriggerman and see if the death penalty is  
24 appropriate. Where do you kind of fall?

25 A. The last.

1 Q. Okay. So you wouldn't necessarily take the  
2 death penalty off the table, just because somebody didn't  
3 pull the trigger; is that right?

4 A. Just because they didn't pull the trigger?

5 Q. Yes.

6 A. Not necessarily.

7 Q. Again, a lot of people don't know this and  
8 have no reason to know it before you get down here. But if  
9 you serve as a juror on a death penalty case, we don't ask  
10 the jury to make a decision between the death penalty and  
11 life, necessarily. What we ask you to do is to answer a  
12 series of three questions that you probably read about.

13 A. Yeah.

14 Q. And depending on the answers to those  
15 questions, that's what determines the appropriate sentence.

16 A. Right.

17 Q. So it's not a situation where we just ask you  
18 to decide the death penalty or not. We really require  
19 jurors to kind of work through and use some mental  
20 discipline and let, you know, the chips fall where they may

21 --

22 A. Right.

23 Q. -- in respect to the death penalty based on  
24 the answers to those questions. Does that seem fair to you?

25 A. Yeah. That seems fair.

1 Q. Let's say Mr. Shook and I decide we're going  
2 to rob a bank. I know he's a bad guy. He's been to prison  
3 a couple of times. And the plan is for him to take the gun,  
4 go in, and hold up the teller, and I'm going to go in with  
5 the bag and collect the money from the bank.

6 And as we go in to do that, maybe I see  
7 the teller reaching for like a silent alarm button and I  
8 yell out, hey, they are going for the alarm. Mr. Shook  
9 turns around and kills the teller, that type of thing.

10 Obviously, he's committed capital murder,  
11 murder in the course of a robbery. He could face the death  
12 penalty. And if a jury thinks that I helped him, aided him,  
13 directed him to do that, then I could be convicted of  
14 capital murder, or if a jury thinks that I should have  
15 anticipated by our plan going in there that somebody could  
16 die like that teller, then I could also be found guilty of  
17 capital murder. That make sense to you?

18 A. Yes.

19 Q. Okay. A lot of times it comes down to what I  
20 should have anticipated. You know, I knew he was a bad guy,  
21 knew he had a gun, and I knew he would do whatever it took  
22 to get out of there, that type thing. Does that make sense?

23 A. Yeah. A couple of things come to my mind in  
24 terms --

25 Q. What comes to your mind?

1 A. Accusation through association, birds of a  
2 feather flock together, so, anyway.

3 Q. And I want to make it real clear.

4 A. I think that's what you were saying,  
5 basically, in a nutshell.

6 Q. We're talking about the law of accomplices.

7 A. Right.

8 Q. If I'm just there, innocent bystander, then  
9 I'm not guilty of anything, if I don't know what he's going  
10 to do. But if I'm actively helping him or aiding him --

11 A. Right.

12 Q. -- and, or if I'm actively helping him to rob  
13 that bank and should have anticipated that a life was going  
14 to be taken, then I could be on the hook for capital murder  
15 and maybe the death penalty, that type of thing. If he  
16 tricks me into going, thinking he's -- you know, he says,  
17 hey, Bill, we're going to make a withdrawal from the bank.  
18 Okay? He didn't tell me what type of withdrawal he's  
19 making. And I really in my mind don't know what's going on  
20 and I don't help him in any way, I'm not guilty of any  
21 crime. Make sense to you?

22 A. Yes.

23 Q. Just because I'm there means I'm not guilty.  
24 I have to help him. If you think I helped him, I should  
25 have anticipated that a life would be taken, then I could be



1 convicted of capital murder.

2 And sounds like that's something, a law  
3 that you can follow, that type of thing?

4 A. Yes, sir.

5 Q. Okay. Everybody we talked to has probably  
6 heard something about this case, kind of figured out from  
7 the questionnaire which case this is.

8 A. Uh-huh.

9 Q. And what the law says is, you know, we don't  
10 need twelve jurors that haven't heard a thing about the  
11 case. That would be almost impossible. You know, in a high  
12 profile case like this, we would never be able to get a  
13 jury. What the law says is, you know, are you able to put  
14 out of your mind what you heard, not necessarily forget  
15 about it, but put it out of your mind and just base your  
16 verdict on what you hear in the courtroom, that type thing.

17 If you can say that I'll keep an open  
18 mind, listen just to the evidence in the courtroom, then you  
19 would be a qualified juror. Is that something that you  
20 think you would be able to do?

21 A. Yes, sir.

22 Q. Okay. What exactly have you heard about this  
23 case, Mr. Ingle?

24 A. Basically, I guess, seven guys escaped from  
25 somewhere and went to Ft. Worth and robbed or attempted to

1 rob a sporting goods store for something, guns or something.  
2 I don't know. All I know is robbery and a murder, seven  
3 guys.

4 Q. You got the big picture, but not necessarily a  
5 lot of details?

6 A. Right.

7 Q. It's kind of the same question, talking about  
8 your work commitment. Would you be able to kind of put that  
9 out of your mind and just make your decision based on what  
10 you hear in the courtroom?

11 A. Yes, sir.

12 Q. You understand -- I mean, we do this to insure  
13 both sides get a fair trial.

14 A. Right, exactly.

15 Q. We don't want jurors thinking about, gee, I  
16 should be at work. I'm losing money and miss something. Or  
17 we don't want jurors thinking about what I heard on TV two  
18 years ago. We want jurors to really concentrate on the  
19 evidence to give both sides a fair trial.

20 A. Exactly.

21 Q. And I think you can see how important that is.  
22 Sounds like that's a law you can follow?

23 A. Yes, sir.

24 Q. Okay. As I told you, in a capital murder  
25 case, you know, you have got those three questions to answer

1 on the back.

2 A. Yeah.

3 Q. Could you flip to those and find them in that  
4 book real quick? The first part of the trial, what we call  
5 the guilt phase, that's where you as a juror would decide  
6 whether he committed capital murder, whether he's guilty of  
7 it. And I'll lay all our cards on the table right now. We  
8 talked about triggerman, nontriggerman, accomplices. It's  
9 our theory in this case and we're prosecuting Mr. Murphy as  
10 an accomplice, a nontriggerman. That's how we're  
11 prosecuting the case.

12 The first phase of the trial, it would be  
13 up to you as a juror to decide whether the State has proven  
14 him guilty beyond a reasonable doubt. Okay?

15 A. Uh-huh.

16 Q. You find him guilty of capital murder, then we  
17 move to that second phase of the trial and that's where you  
18 would answer the three questions. Have you had a chance to  
19 look at the questions?

20 A. The second question was kind of confusing to  
21 me, I think.

22 Q. Let me talk to you a little bit about that  
23 because that's kind of what we've already talked about.  
24 That's the situation where you do have an accomplice, you  
25 know. If you look at that question, the jury would have to

1 decide whether the person actually caused the death. That  
2 would be the triggerman. I told you that's --

3 A. I've understood that part, I guess, is,  
4 basically, I understand whether or not he did that, but then  
5 you want to find out whether or not he intended to do some  
6 act of murder either there or later on down the line and  
7 that kind of -- so what you are, basically, saying, is, you  
8 are wanting me to say, do you think he did or didn't do  
9 this, but would have or intended to later on down the line,  
10 maybe.

11 Q. Let me see if I can clear it up this way.  
12 I'll do my best. You know, we talked about me. You could  
13 convict me of capital murder with Mr. Shook, one, if you  
14 think I should have anticipated a life would be taken.  
15 Okay? You could find me guilty.

16 In order to give me the death penalty,  
17 you have to answer this question. You have to be convinced  
18 beyond a reasonable doubt that either I pulled the trigger  
19 and, you know, in our case I didn't. He did. Or that I  
20 intended that that person be killed. That would be a  
21 situation maybe where I hire somebody to kill my wife or my  
22 business partner, a murder for hire. Or, finally, that I  
23 anticipated a human life would be taken.

24 A. Okay.

25 Q. It's a little bit different. To find me

1 guilty you have to think I should have anticipated a life  
2 would be taken. In order to answer that question yes and  
3 give me the death penalty, you have got to think that I  
4 actually anticipated. Okay? That I did anticipate a life  
5 would be taken.

6 And you may think, you know, hey, he knew  
7 the plan for the robbery, he knew he had a loaded gun, he  
8 knew he was dangerous, Mr. Wirskey, you should have and you  
9 did anticipate that a life would be taken.

10 A. Okay. I get it now.

11 Q. Does that make sense?

12 A. I do now. Intended was the key word there and  
13 whether he did or not.

14 Q. You know, I'm not the person that pulled the  
15 trigger, so you need to decide whether I intended to kill  
16 that person or I anticipated that that person could be  
17 killed.

18 A. Exactly, I understand it now.

19 Q. One way to look at it, I guess, is if you  
20 convict someone of capital murder, that person is sitting on  
21 a life sentence. Okay? They are going to get a life  
22 sentence unless these questions are answered yes, yes, and  
23 no. If the questions are answered in a particular way, they  
24 are going to get the death penalty.

25 Some people call these maybe like a set

1 of filters. You know, you take the facts that you heard in  
2 the first part and take the facts that you heard in the  
3 second part, run them through these questions, this set of  
4 filters, and, like I said, however it shakes out, it shakes  
5 out. If it's yes, yes, and no, then it's an automatic death  
6 penalty and the Judge would sentence the defendant to death.  
7 Does that kind of make a little bit of sense?

8 A. Yes.

9 Q. Okay. As you look at those first two  
10 questions, No. 1 and No. 2, we have the burden at this table  
11 to prove to you, the jury, that the answers to those  
12 questions should be yes. We've got to do that beyond a  
13 reasonable doubt. Okay? Just like we've got to prove the  
14 person's guilty beyond a reasonable doubt, we've got to  
15 prove to you the answer to these questions should be yes.  
16 Their default settings is kind of a no answer.

17 Looking at Special Issue No. 1, is there  
18 a probability that the defendant would commit criminal acts  
19 of violence that would constitute a continuing threat to  
20 society? That's kind of where we ask the juror to look at  
21 all the evidence, what they heard in the first part, what  
22 they may have heard in the second part, and decide whether  
23 he would be a continuing danger to society, make a  
24 prediction, basically.

25 Is that something that you think you can

1 do, if you are given enough information?

2 A. Yes, sir.

3 Q. Okay. As I told you what the law requires,  
4 you know, in order to get a fair trial is that the jurors  
5 start the second phase of the trial, the punishment phase,  
6 where they answer these questions, with an open mind. And  
7 none of these questions should be answered automatically,  
8 based on what you did in the first part of the trial, the  
9 guilt phase.

10 And let me give you an example of that.  
11 We talked to some people that say, Mr. Wirsky, I find  
12 somebody guilty of capital murder, when I get to question  
13 No. 1, my mind is already closed. I'm going to answer it  
14 automatically every time yes. Because if I find somebody  
15 guilty of capital murder, I'm going to think that they are a  
16 future danger. You may say there's a lot of common sense to  
17 that and that may be true.

18 But what the law requires you to do and  
19 what we ask you to do if you were a juror, is to wait and  
20 keep an open mind and look at all that evidence. You know,  
21 you may come back to that conclusion, he's going to be a  
22 future danger. But the point is, you just can't do it  
23 automatically. You kind of have to make this independent  
24 inquiry. Does that make sense to you?

25 A. Yeah. Are you saying that you will go through

1 one phase of this to come up with a guilty verdict and then  
2 you will go and present stuff to make a decision on this?

3 Two phases?

4 Q. Exactly. The first phase we're just kind of  
5 concerned, you know, like in our situation did we rob the  
6 bank, commit capital murder. When we get to the second  
7 phase, you are probably going to hear extra information  
8 about a person's background, if they had a good background,  
9 bad background, and that's to help you answer these three  
10 questions. And that's why it's important when you start the  
11 second phase of the trial, you go in with that open mind.

12 I could sit here and give you different  
13 sets of facts all day long, where you convict someone of  
14 capital murder, but never think they are going to be a  
15 future danger. The law doesn't require you to think of  
16 anything like that.

17 But I want to make sure that you can, you  
18 know, keep an open mind to that situation. Just because you  
19 have convicted somebody of capital murder, you are not going  
20 to automatically answer No. 1 yes, and that type of thing.

21 A. You have to prove that to me.

22 Q. Right. We have to prove it. Exactly. And  
23 you can go back and look at the facts of the crime. You  
24 just can't make that decision automatically. You can go  
25 back and look at the facts of the crime, plus anything else



1 you may have heard in that second phase. You have to keep  
2 that open mind. It can't be automatic. Does that make  
3 sense?

4 A. Yes.

5 Q. Again, we have the burden of proving that to  
6 you beyond a reasonable doubt. If you answer yes to that,  
7 you move to the second one, we have kind of already talked  
8 about. You know, if you think we have proven beyond a  
9 reasonable doubt that a person intended to kill or  
10 anticipated a life would be taken, then you would answer  
11 that yes as well, and you would finally get down to that  
12 third question or that third Special Issue.

13 Mr. Ingle, what this is, is basically a  
14 safety net, a last stop in the process before someone gets  
15 sentenced to death. Okay? Before you even get to this  
16 question, you have found somebody guilty of capital murder,  
17 you have found beyond a reasonable doubt they are going to  
18 be that future danger to society. You found beyond a  
19 reasonable doubt that they at least anticipated that a life  
20 would be taken.

21 And this question No. 3 asks you to kind  
22 of step back from all of that, look at everything you have  
23 heard in the entire trial, both phases, and see if there's  
24 something there either in the facts of the crime or the  
25 facts and background of the person and his personal

1 culpability, what blame he bears, and see if there's  
2 anything there that is mitigating, that lessens his blame,  
3 and if there is, is it sufficient that his life ought to be  
4 spared, that he not get the death penalty. Does that kind  
5 of make sense to you?

6 A. Uh-huh.

7 Q. It's just -- it's a last stop to give every  
8 benefit of the doubt to the defendant and again, you know, I  
9 can give you all sorts of different hypothetical deals. But  
10 we need to make sure that you can keep an open mind and at  
11 least tell us at this point I can keep an open mind to  
12 mitigating evidence. If I hear something that I think is  
13 mitigating, that lessens his blame, I can consider that and  
14 I'll keep an open mind to that question.

15 Is that something that you think that you  
16 can do?

17 A. I think that I can be openminded about it.

18 Q. Okay. And this question is a little bit  
19 different. We don't have the burden of proof. They don't  
20 have the burden of proof. It's just whatever the jury  
21 thinks to answer this question yes or no. And the law  
22 doesn't necessarily require that you consider anything  
23 mitigating. You know, it's just whatever you think. You  
24 don't even have to agree with the rest of the jury.

25 Is there anything off the top of your

1 head that you can think of that might be mitigating, kind of  
2 the type cases we've been talking about?

3 A. What do you mean by mitigating?

4 Q. Mitigating would be something -- I guess, take  
5 my case for example.

6 A. Uh-huh.

7 Q. That would lessen my personal moral  
8 culpability maybe. Maybe I had a change of heart after the  
9 teller got killed and I called 911. You could think that  
10 was mitigating. Maybe I've never been in trouble before,  
11 don't have a criminal record. You can think that's  
12 mitigating. Maybe I was real young. Maybe I was 18 years  
13 old. Some people think that could be potentially  
14 mitigating. Maybe I have some sort of mental defect or  
15 something. I still know the difference between right and  
16 wrong, not really mentally retarded, but I have some issues,  
17 that type of thing.

18 Is there anything other than those that  
19 maybe comes to mind for you, something that might be  
20 mitigating?

21 A. No.

22 Q. That's the most common answer we get, because  
23 I hope you don't sit around thinking about this, you  
24 probably never thought about this. Like I said, you don't  
25 have to consider anything mitigating. You just have to say,

1     gee, I could keep an open mind to it. You know, maybe that  
2     situation or --

3             A.       I get it. Mitigating, I didn't understand  
4     that, what that meant.

5             Q.       It's kind of opposite of aggravating. You  
6     know, I may shoot Mr. Shook ten times. That's aggravated.  
7     Or I may shoot him once out of anger and call 911. That  
8     might be potentially mitigating. It's kind of the opposite,  
9     something that lessens my moral blameworthiness.

10            A.       There you go.

11            Q.       Is that something that you think you can keep  
12     an open mind to?

13            A.       Yeah. I thought I was pretty openminded until  
14     I got married.

15            Q.       As a newlywed myself, I tend to agree with  
16     you. But, I mean, in all seriousness, Mr. Ingle, we talk to  
17     people who say if I have convicted somebody of capital  
18     murder, I found they were a future danger, found they  
19     anticipated, there's nothing -- nothing that could ever come  
20     up that I would think is mitigating. My mind is closed.  
21     I'm going to answer no to that question every time.

22                    And, of course, if you feel like that,  
23     you just wouldn't be a fair juror. You wouldn't be able to  
24     give both sides a fair trial. So that's why it's important  
25     when we talk to people, they can tell us, and really mean

1 it, they can keep an open mind and follow the law when you  
2 get down to Special Issue No. 3. Is that something that you  
3 feel you can do?

4 A. I think I can.

5 Q. Okay. If I don't ask you this question, they  
6 probably are. But whenever lawyers hear "I think I can", we  
7 always kind of deal with black and white and yes or no.

8 A. All right.

9 Q. Do you think that you can keep an open mind to  
10 that?

11 A. I can keep an open mind --

12 Q. Okay. There you go.

13 A. -- to both sides.

14 Q. And that's all we're asking, somebody who  
15 doesn't prejudge.

16 A. Right.

17 Q. Didn't come into this with preformed opinions.  
18 Does that kind of scheme that we have make sense to you  
19 about the two parts and then the three questions?

20 A. Sure.

21 Q. Kind of understand where we're coming from and  
22 what's required of being openminded and be a fair juror?

23 A. Yes.

24 Q. Let me talk to you a little bit about just  
25 some things, some laws, we have that apply in any criminal

1 case. Have you ever been on a jury before?

2 A. No, sir.

3 Q. Okay. But you will probably be familiar with  
4 this stuff. All criminal defendants are presumed innocent.  
5 That means legally.

6 A. Exactly.

7 Q. We presume him innocent. As he sits there  
8 right now, he's presumed innocent. If we all broke camp  
9 right now and went home, you know, he would be found not  
10 guilty. It's up to us to prove to a jury beyond a  
11 reasonable doubt that he's guilty.

12 We have the burden of proof. It's up to  
13 us to do the proving. That burden of proof never shifts to  
14 this table. You know, these folks are fine lawyers. You  
15 will probably hear from them. But legally you don't have  
16 to, because they have no burden. They can sit there and do  
17 crossword puzzles all day, if they wanted to. But it's up  
18 -- we do the accusing, so we have to do the proving, type of  
19 thing.

20 As a part of that, a person charged, a  
21 criminal defendant, is not required to testify in their own  
22 defense. That's the Fifth Amendment. You probably heard  
23 about it. No one can make him take the stand and testify if  
24 he doesn't want to. If he wants to testify, no one can keep  
25 him off the stand.

1 But if he doesn't testify, what the Judge  
2 will tell you the law is, is that you as a juror can't  
3 consider that for any reason at all. It's just got to be a  
4 nonfactor that he didn't testify. You can't hold it against  
5 him or start thinking, boy, I wonder why he didn't take the  
6 stand. Or, if I was there, I'd take the stand and tell the  
7 jury my side of the story. It's natural to think that.

8 A. I don't know about that.

9 Q. Okay. But legally you just can't hold it  
10 against him. Does that make sense to you?

11 A. Right, uh-huh, yes.

12 Q. Does that sound like something you can do?

13 A. Yes.

14 Q. Okay. We talked about police officers  
15 earlier. You mentioned that you feel that -- felt pretty  
16 strongly that they may deserve a little bit extra  
17 protection.

18 A. Respect.

19 Q. Respect for the job they do. We have alleged  
20 that a police officer has been killed in this case. You  
21 probably are going to hear from police officer witnesses.  
22 Okay?

23 What the law says about that is this,  
24 that jurors can't give police officer witnesses more  
25 credibility just because they are police officers, just

1 because they walk in the court wearing a badge and gun and  
2 uniform. The law says that you have to start them off with  
3 that same level of credibility. You start listening to them  
4 and you believe they are credible, then you can believe  
5 them. But you just can't give them that extra headstart or  
6 that extra leg up of credibility. Does that make sense to  
7 you?

8 A. Don't make no difference to me.

9 Q. Okay. Another potential type witness you may  
10 hear from is a psychiatrist or psychologist or something  
11 like that, a mental health professional. Sometimes in these  
12 death penalty cases either side can call one. So we always  
13 have to make sure potential jurors like you can keep an open  
14 mind to their testimony.

15 We talk to a lot of people and kind of  
16 two ends of the spectrum and a group in the middle. One end  
17 says, I believe, you know, I believe them. They walk on  
18 water. Every word out of their mouth is solid gold. And  
19 the other end says it's all magic and hokus pokus. I don't  
20 believe it. It's a waste of money. I wouldn't believe a  
21 word a psychiatrist or psychologist told me.

22 The group we're kind of looking for is in  
23 the middle, that could be fair, kind of like with police  
24 officers. And I'll just wait and listen and see what they  
25 have to say.



1 If it makes sense, I'll go with it. And if it doesn't, I  
2 won't, that I could have that open mind.

3 And we have a lot of strong feelings one  
4 way or the other, but where do you kind of put yourself on  
5 that scale?

6 A. I respect people for getting an education.

7 Q. Could you keep an open mind, if you heard from  
8 a psychiatrist or psychologist and kind of start them off on  
9 that same level?

10 A. Yeah.

11 Q. Okay. So you are not automatically going to  
12 discount what they have to say?

13 A. I think it's his opinion based on a little bit  
14 more education than others, basically.

15 Q. So you would keep that open mind to it? If it  
16 makes sense to you, you would consider it and if it didn't,  
17 you wouldn't?

18 A. Right.

19 Q. Okay.

20 A. Yes.

21 Q. Mr. Ingle, the packet you have in front of  
22 you, I think on the back of the very last page, if you would  
23 flip to it. There should be something there called the True  
24 Bill of Indictment. Do you see it there?

25 A. Yes, sir.

1 Q. That's basically -- we call it an indictment,  
2 but it's, basically, the official legal paper that charges  
3 him with a crime. And it kind of -- if you read through it,  
4 a certain person, Patrick Murphy, on a certain day in a  
5 certain county, basically, committed capital murder. We  
6 have kind of said he committed it two different ways. He  
7 shot a police officer in the course of his duties and that  
8 he also killed someone during the course of a robbery. We  
9 can allege it two different ways. If we prove one or both,  
10 he would be guilty of capital murder.

11 But each one of those is broken down into  
12 different elements of the crime. We have to prove a certain  
13 person on a certain day killed a certain person in a certain  
14 way and those are elements that we have to prove. It's part  
15 of our burden of proof. We have to prove each and every  
16 element that we allege in that indictment. Does that kind  
17 of make sense to you?

18 A. Uh-huh.

19 Q. I know it's not something that you sit around  
20 thinking about. But kind of the bottom line is, we don't  
21 get partial credit. You know, we can't go nine for ten or  
22 eight for ten and get a guilty or meet our burden of proof.  
23 We have to prove each and every element. In the eyes of the  
24 law, one of those elements isn't any more important or less  
25 important than another one. Okay?

1 So I'll give you kind of a crazy example.  
2 Let's say that Mr. Shook and I are in trial, trying a  
3 capital murder that happened in Grand Prairie, Texas. As  
4 you may know, some of Grand Prairie is in Dallas County and  
5 some is in Tarrant County. We go to trial. We think it  
6 happened in Dallas County. We don't do our homework. The  
7 cops are lazy. They don't do their job. We're lazy. We  
8 don't do our job.

9 You get down here as a juror and you  
10 listen to the case and there's no doubt the defendant  
11 committed a capital murder, but the evidence shows that it  
12 actually happened in Tarrant County and not Dallas County.  
13 Okay? And in that situation we would have failed to prove  
14 to you one of the elements of the crime.

15 You know, in the eyes of the law one  
16 element is no less or more important than the others. And  
17 the law would require you to find that person not guilty  
18 because we didn't do our job. We didn't meet our burden of  
19 proof.

20 Now, we would get fired, cops would get  
21 fired, if we were that negligent and didn't do our job. But  
22 the law would require that you as a juror would find that  
23 person not guilty.

24 A lot of people don't like that. We talk  
25 to a lot of people and they start crossing their arms like

1 you are and say, Mr. Wirskye, you are letting a murderer go  
2 free on a technicality. And a lot of people feel that way.  
3 But --

4 A. I didn't know that was why I crossed my arms,  
5 but --

6 Q. Usually people cross their arms when I get to  
7 this.

8 A. I wouldn't disagree. It makes perfect sense  
9 to me in the legal sense of things.

10 Q. So you could follow that law and find him not  
11 guilty, if we didn't prove all our elements?

12 A. Yes.

13 Q. Okay. We allege in that indictment that he's  
14 killed by a knife and it turns out he's killed by a gun.  
15 You would find him not guilty because we haven't met one of  
16 our elements, the way he was killed, and that type of thing?

17 Let me talk to you a little bit about a  
18 life sentence. You know, there's only two possible  
19 punishments for capital murder, either the death penalty,  
20 that we've talked about, and an automatic life sentence, if  
21 you don't get the death penalty.

22 If you are a juror, the Judge will tell  
23 you and the law will tell you what a life sentence means.  
24 Okay? In Texas a life sentence means a person will do forty  
25 years day for day, week for week, forty calendar hard years,

1 before that person would become eligible for parole. Okay?  
2 They may not make parole after forty. They may serve out a  
3 whole hard life sentence or they may make parole the first  
4 time after forty years.

5 But the law tells you this, then, the  
6 very next line tells you, you can't consider it. Okay? And  
7 let me tell you why. You know, we talked about using that  
8 mental discipline and working through the questions to come  
9 to the right answer. We don't want people to say forty  
10 years, man, that's a long time. I'm satisfied with that.  
11 So I'm not even going to worry about answering these  
12 questions, really. I'm going to answer them in such a way  
13 that he gets that life sentence, okay, because I'm satisfied  
14 with forty years.

15 We -- also, the flipside of that is we  
16 don't want people thinking forty years, that's not long  
17 enough. I never want him getting out and because of that  
18 I'm going to answer these questions in such a way that he  
19 gets the death penalty. I'm not really going to work  
20 through the facts and the evidence. Does that kind of make  
21 sense to you?

22 A. Yes.

23 Q. We kind of ask jurors to kind of assume that  
24 life means life because he may make parole at forty and he  
25 may not. He may serve a hard life sentence. But we require

1 you to kind of think that life means life. Does that make  
2 sense to you?

3 A. Yes.

4 Q. Okay. And you wouldn't consider any of that  
5 -- you would be able to make that assumption; is that right?

6 A. Yes.

7 Q. Okay. Let me give you another example. Let's  
8 say we have a capital murder case, allege that robbery  
9 happened, and somebody got killed during the course of that  
10 robbery, that the murder -- robbers shot and killed  
11 somebody.

12 And we go to trial and there becomes some  
13 doubt that a murder actually happened, okay, or what  
14 particularly caused the death, okay? So there might be  
15 reasonable doubt about whether this person committed a  
16 murder during a robbery, but there may not be any doubt that  
17 that person committed robbery, you know, the lesser offense.  
18 So you may have an option as a juror to convict someone of a  
19 lesser offense, if that's what you think he's guilty of.

20 You may have an opportunity in that first  
21 phase of the trial to find someone guilty of capital murder,  
22 find them guilty of an aggravated robbery, or find them not  
23 guilty. Does that kind of make sense to you, that scheme?

24 A. Yeah.

25 Q. And we call this aggravated robbery a lesser

1 included offense because it's lesser in punishment. And  
2 it's kind of included within the capital murder of that  
3 aggravated robbery. Aggravated robbery in Texas is a  
4 first-degree felony and you can punish someone anywhere from  
5 five years in the penitentiary all the way up to 99 years or  
6 life. You have got that full range of punishment.

7 And I don't know if this is ever going to  
8 come into play in this case, but we need to talk about it  
9 just a little bit, because there's that possibility there  
10 that you may convict someone of that lesser offense of  
11 aggravated robbery.

12 In order to be a qualified juror at this  
13 point, you need to be able to tell us that I could keep an  
14 open mind to the full range of punishment for aggravated  
15 robbery, from five years all the way up to life, just  
16 depending on what the facts and circumstances showed in  
17 either phase of the trial or both phases. I could assess  
18 that appropriate punishment. Does that make sense to you?

19 A. Yes.

20 Q. Could you keep an open mind to that full range  
21 of punishment, five all the way up to life?

22 A. Yes, sir.

23 Q. Or aggravated robbery?

24 A. Yes, sir.

25 Q. Do you have any questions for me? I know I

1 have thrown a lot at you. You are starting to look like  
2 you're tired of hearing me talk.

3 A. That's why I folded my arms, that, and it's  
4 just tight up here. I mean, I'm kind of a big guy and --

5 Q. It's tough on big guys.

6 A. But, anyway, no, I don't have -- I don't think  
7 I have any questions.

8 Q. Do you feel that you are the type person that  
9 could be fair in this case and give both sides a fair trial?

10 A. Yes.

11 Q. Not going to prejudge it in any way?

12 A. Correct.

13 Q. Because it sounds like you feel pretty  
14 strongly about the death penalty; is that right?

15 A. If it's appropriate.

16 Q. Okay.

17 MR. WIRSKYE: I'll pass the witness.

18 CROSS-EXAMINATION

19 BY MR. SANCHEZ:

20 Q. Mr. Ingle, my name is Juan Sanchez and I  
21 represent Mr. Murphy here. And as you know, you are down  
22 here on the case where the State is seeking the death  
23 penalty, right? So literally it's a life and death question  
24 that you may have to answer, if you are chosen on this jury.  
25 Okay?



1                   And a lot of times, you know, I think we  
2 as attorneys ask questions of people and we phrase them in a  
3 certain way where we give you the answer that we want to get  
4 from you. Attorneys are notorious for that. And sometimes  
5 people don't like being in front of them.

6                   But my job here is to find out your true  
7 feelings. You have answered some questions today where you  
8 indicated that you may be able to do something and, as  
9 Mr. Wirsky said, you know, that leaves the question open  
10 to, I may not be able to do something.

11                  A.       Right.

12                  Q.       And as you can appreciate, we're dealing with  
13 a life and death situation here. And we would rather have  
14 you err on the side of caution. Okay? In other words,  
15 sometimes it's better to put yourself in a position or not  
16 put yourself in a position where you may not be able to do  
17 something if you are not sure that you can do it. Does that  
18 make sense?

19                  A.       Yes.

20                  Q.       And I appreciate you for answering loudly so  
21 we can hear you. But our job is to get your true feelings.  
22 You know, I think everybody wants to say they are fair.  
23 Everybody wants to say they can follow the law. But in  
24 reality, I mean, that's just questions. You say legally you  
25 can be fair, but in reality, you know, based on your

1 feelings, you may not be able to do certain things. And  
2 does that make sense to you?

3 A. Yes.

4 Q. Okay.

5 A. I get into this mode of this wife thing throws  
6 everything off. I think I know a lot of things.

7 Q. Your wife tell you, you don't have an open  
8 mind?

9 A. No.

10 Q. I've been married for seven years and three  
11 kids.

12 A. I think I have an open mind. I think I have a  
13 lot of things that somebody else might not think I have.

14 Q. I have to be careful what I say about my wife.  
15 She's a lawyer down here and I don't want her walking in  
16 here and hearing what I'm saying.

17 A. I have an open mind and I think that I'm a  
18 fair guy myself.

19 Q. I think that I'm an openminded guy, but there  
20 are situations in life where I'm not openminded, whether it  
21 comes to things like about children I may not be as  
22 openminded as I thought I might be, depending on the  
23 situation. You might not be as openminded as you think you  
24 are or other people. That's the reason that we go through  
25 this process, so we can find out what people really think so

1 it will give us an idea of who is going to sit on the jury  
2 and make that life and death decision.

3 So the one area that I want to cover is,  
4 you have indicated on your questionnaire and you have  
5 indicated on questions that you have strong feelings when  
6 there's a police officer involved. Would that be fair to  
7 say?

8 A. I respect police officers, highly respect. I  
9 give them the benefit of the doubt. I mean, yes -- no, sir,  
10 you are right and I'm wrong.

11 Q. And I understand.

12 A. Now --

13 Q. And that's what I want to explore a little  
14 with you. Because --

15 A. Not that they may always be right, but I'm  
16 going to give them the benefit of the doubt.

17 Q. I understand. Because of your strong feelings  
18 about police officers and if you were to find somebody  
19 guilty of killing a police officer in the course of their  
20 duties, do you think a life sentence would ever be  
21 appropriate for somebody like that that you found guilty of  
22 killing a police officer?

23 A. I think it was a human being, number one, and  
24 the circumstances surrounding it, would indicate life or  
25 death, I guess.

1 Q. Okay. And would you be able to consider life?  
2 Do you think it would ever be appropriate?

3 A. I would consider the evidence and if it was  
4 appropriate either way, I would try to make a decision based  
5 on what I've heard from both sides as a party.

6 Q. Another thing I want to talk to you about is  
7 these Special Issues that we've talked about. Like the  
8 State said, it's a trial first. And if you find the person  
9 guilty of capital murder, then you have to consider these  
10 issues that you have in front of you.

11 And you have indicated that you would  
12 hold the State to proving issue No. 1 and issue No. 2,  
13 correct? You would make the State prove to you beyond a  
14 reasonable doubt that the person was a continuing threat to  
15 society; and issue No. 2, you would make them prove beyond a  
16 reasonable doubt that the person that you found guilty  
17 anticipated that a human life would be taken?

18 I mean, I'm kind of paraphrasing those  
19 issues, but you have indicated that you would make them  
20 prove that to you; is that correct?

21 A. Yes.

22 Q. Okay. And then we get to Special Issue No. 3.  
23 Neither side has a burden. They don't have to prove to you  
24 that there is no mitigating issues and we don't have to  
25 prove to you that there are. Of course, we may want to do

1 that, okay?

2 Now, a lot of times in answering Special  
3 Issue No. 3, I mean, that's the last step before someone can  
4 receive the death penalty. People would like to hear from  
5 the accused or the defendant. What do you think about that?

6 A. I think that's probably why I have a lawyer  
7 for him to tell me whether to or not -- so you know what, I  
8 go with what that lawyer -- if a lawyer told me to keep my  
9 mouth shut, I'm going to keep my mouth shut. And I believe  
10 that's probably the best policy no matter what the deal is.  
11 I don't know.

12 Q. You can, no matter what the deal is.

13 A. I don't know.

14 Q. You can more importantly --

15 A. I believe, you know, that's why you are  
16 sitting there and that's why you are sitting there and  
17 there's not -- it's not necessary unless maybe you think  
18 it's necessary or --

19 Q. And that's what I want to find out, if you  
20 think it's necessary?

21 A. I don't think it's necessary.

22 Q. Okay. And you are talking about as far as us  
23 doing our job, whether we would advise him to take the stand  
24 or not, correct? But what about yourself?

25 A. This is not us. It's between y'all. I don't

1 have any -- it's not -- I don't -- that's not a part of it  
2 as far as I'm concerned. If he wanted him to and you want  
3 him to, fine. But I'm not expecting him to say anything, if  
4 that's what you are asking me.

5 Q. What I'm asking you, if you sit on the jury  
6 and you get down to Special Issue No. 3, would you want him  
7 to get up and argue for his life?

8 A. I would have to come up with some mitigating  
9 issues in my mind and I don't know whether I would need him  
10 to say anything or not based on what I've heard.

11 Q. And if you didn't hear from him, you wouldn't  
12 hold it against him in any way?

13 A. I don't think -- no, no, I wouldn't.

14 Q. Sometimes we don't phrase questions the right  
15 way or sometimes we don't even think of asking things that  
16 might affect people to sit in a jury on a case like this.  
17 Is there anything that we haven't asked? We've talked to  
18 you for a long time, but is there something that you can  
19 tell this Court or you can tell us that would keep you from  
20 being fair on this case? Something that in your background,  
21 something -- an experience that you have had, a way of  
22 thinking, moral grounds, something that would keep you from  
23 being fair to Mr. Murphy as he sits here today?

24 A. No.

25 Q. That's a short answer.

1 A. Pardon?

2 Q. That was a short answer.

3 A. I'm keeping it easy on her.

4 MR. SANCHEZ: That's all the questions I  
5 have.

6 THE COURT: Thank you, sir. If you  
7 would, I need to have you stand outside just for a few  
8 moments and we'll have you back.

9 THE COURT: What says the State?

10 MR. WIRSKYE: The State has no challenge  
11 for cause.

12 MR. SANCHEZ: We have no challenges for  
13 cause.

14 THE COURT: Would you like to step into  
15 your office?

16 (Recess)

17 THE COURT: What says the State?

18 MR. SHOOK: State will accept the juror.

19 THE COURT: State accepts.

20 MR. SANCHEZ: We accept the juror.

21 THE COURT: He will be our No. 2 juror.  
22 Ask him to come in.

23 [Prospective juror in]

24 THE COURT: Thank you. You may be  
25 seated. Mr. Ingle, I'm going to inform you that you have

1 been selected to sit on this jury. And we will go through  
2 the next phase of this process. The Sheriff will go over  
3 some things with you and I have a document that I need you  
4 to look at. I'm going to provide some juror instructions  
5 for you.

6 The first thing that will happen when you  
7 go back to work and you tell them I got selected to sit on a  
8 capital murder case, they are going to want to share their  
9 opinions with you.

10 PROSPECTIVE JUROR: No.

11 THE COURT: You know what I'm talking  
12 about?

13 PROSPECTIVE JUROR: I know what you're  
14 talking about.

15 THE COURT: Talk shop. And the lawyers  
16 like your honest opinion. And if you can just block out --  
17 if you are going back and tell someone, then they are going  
18 to share with you. So my instructions I'm giving you, will  
19 tell you, please just tell them I have to arrange my  
20 schedule to work on the second shift or whatever beginning  
21 November 10th for a couple of weeks and leave it at that.  
22 Just tell them I've got jury duty and leave it alone.

23 Hardest thing I think that you have  
24 already indicated is your wife. Tell her the same thing.  
25 I've been selected to this jury. I can't talk with you



1 about it. I have to listen to the evidence from the witness  
2 stand like you told us. The Sheriff will go over with you a  
3 few things.

4 Here's some instructions that I will give  
5 you now. These are the parking instructions to get  
6 reimbursed for your parking downstairs. This is a  
7 supplemental information sheet to be sure that I have got  
8 all your personal information, we haven't made any errors in  
9 the numbers and so forth, and especially check the e-mail.

10 This information is retained by me in my  
11 computer. You understand, I'm not going over this on the  
12 record because it's going to be in the Sheriff's control to  
13 get your information. That is for your protection. Fair  
14 enough?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: All right. So with that, if  
17 you would, the Sheriff has some things to go over with you  
18 in the back. You will receive another summons from me  
19 sometime before the November 10th date. You will come back  
20 down here for about a one-hour orientation with all the  
21 jury. We're going to put everybody in the box together.  
22 That way, when we start on November 10th, one thing that you  
23 can ask the Sheriff about is I respect your time. The  
24 letter said half a day. You are going to be out of here  
25 before lunch. When we say we will start at 8:30 on Monday

1 morning the 10th, I'm not talking about you coming down here  
2 and having donuts and coffee and getting in the back at  
3 11:00. You will be in that box at 8:30. We will be ready  
4 to go to work.

5 The way we get there is we have the  
6 orientation a week to ten days beforehand to get all your  
7 questions answered, all the procedures down, and get the  
8 Sheriff on line with you. Fair enough?

9 PROSPECTIVE JUROR: Uh-huh.

10 THE COURT: Okay. Go with the Sheriff  
11 and we'll see you down the road. Thank you, sir.

12 [Prospective juror out]

13 (Recess)

14 THE COURT: Frankie Jean Freeland.

15 [Prospective juror in]

16 THE COURT: Thank you. You may be  
17 seated.

18 PROSPECTIVE JUROR: Thank you.

19 THE COURT: Good afternoon. How are you?

20 PROSPECTIVE JUROR: Fine, I think.

21 THE COURT: Is it Frankie Jean Freeland?

22 PROSPECTIVE JUROR: Correct.

23 THE COURT: Welcome to the 283rd. And I  
24 want to be sure, did you have enough time to review the  
25 guide I provided for you?

1 PROSPECTIVE JUROR: Yes, I did.

2 THE COURT: I know we put an awful lot of  
3 law in front of you during a short period of time.

4 PROSPECTIVE JUROR: Yes, there is.

5 THE COURT: And we don't expect you to  
6 know all of that coming in. And the attorneys will spend  
7 time with you this afternoon and visit with you and try to  
8 educate you on the law, give you examples, to help you  
9 understand how it works, because it all interrelates.

10 And my job is to be sure at the end that  
11 you understand the law, number one. Number two, can you  
12 follow the law? That's my job here.

13 PROSPECTIVE JUROR: Okay.

14 THE COURT: This is about as informal as  
15 we can get. I know many people feel they are the one on  
16 trial. Nerves are high because you haven't been through  
17 this process before and we understand that. So we try to  
18 make you as comfortable as we can. The attorneys are  
19 certainly not going to ask you any trick questions. There  
20 are no wrong answers, only truthful answers.

21 The only question that I have for you,  
22 ma'am, in reviewing the guide, do you have any questions  
23 about the law which you have before we begin?

24 PROSPECTIVE JUROR: No.

25 THE COURT: Will you have any trouble

1 serving the Court for the two weeks beginning November 10th?

2 PROSPECTIVE JUROR: No, sir.

3 THE COURT: Very well. Mr. Shook?

4 FRANKIE FREELAND,

5 having been duly sworn, was examined and testified as  
6 follows:

7 DIRECT EXAMINATION

8 BY MR. SHOOK:

9 Q. Ms. Freeland, I'll be asking you questions on  
10 behalf of the State. Have you been down for jury selection  
11 before?

12 A. Yes, sir, I have.

13 Q. You probably know from that experience that we  
14 usually choose the jurors from just the large panel.

15 A. Correct.

16 Q. We use this procedure because it's a death  
17 penalty case. But we're just interested, as the Judge said,  
18 in your honest opinions. And if you have any questions at  
19 any time, feel free to ask. I have reviewed your  
20 questionnaire and I'll be asking you some questions from  
21 that. And, obviously, we'll talk to you about -- in depth  
22 how you feel about the death penalty and laws that apply to  
23 this type of case.

24 You know from the Judge's first talk and  
25 reading the questionnaire, that this case involves an

1 incident that happened at the Oshman's back on December 24,  
2 2000, and it got a lot of publicity.

3 A. Correct.

4 Q. So every juror has heard something about it,  
5 some more than others. So we explore that with each juror.  
6 And you live in Irving, and it looks like you were pretty  
7 familiar with some of the facts in that particular store; is  
8 that right? The Oshman's itself?

9 A. I've read about it.

10 Q. Have you ever been in the Oshman's?

11 A. Not this particular one, no.

12 Q. Okay. But you are aware that there is a  
13 street named after it?

14 A. Correct.

15 Q. What do you remember about the case itself?

16 A. Actually, all I remember is that an alarm had  
17 gone off or something, that Officer Hawkins had answered  
18 that alarm, and subsequently during his investigation or  
19 walking through the store, he came upon these people and he  
20 was shot and ran over. That's basically my knowledge of it.

21 Q. Do you remember anything about what happened  
22 after that incident?

23 A. Um --

24 Q. Arrests or anything of that nature?

25 A. I do remember them being -- leaving town and

1 the manhunt being on for them and trying to, you know, find  
2 where they were and when they were arrested. And I think  
3 one committed suicide or something; is that correct? And,  
4 you know, that they were all brought -- eventually brought  
5 back for trial.

6 Q. Did you follow any of the subsequent court  
7 proceedings?

8 A. No, I have not.

9 Q. Okay. The law is that the simple fact that  
10 you have heard or read something or seen something on TV  
11 doesn't disqualify you. We don't expect you to put it out  
12 of your mind. It's that if you sat on the jury, though, you  
13 would have to decide the case based on the evidence you hear  
14 in the courtroom. Some people can do that. Other people, a  
15 few people, have told us, you know, they have already formed  
16 opinions about what they read, saw, or heard. Most people  
17 can follow that instruction.

18 Would you be able to follow that Court's  
19 instruction and determine this case just based on the facts?

20 A. I believe so.

21 Q. Okay. Let's talk for a minute about how you  
22 feel about the death penalty. Are you in favor of it as a  
23 law?

24 A. Yes, I am.

25 Q. Can you just tell me the reason you favor it,

1 the purpose you feel it serves society?

2 A. I feel the death penalty is warranted in cases  
3 like this where a police officer is performing his duty. I  
4 believe in the death penalty when it's a particularly  
5 heinous crime where someone is decapitated or, you know,  
6 children, in the case of death of children and where  
7 somebody plans to kill someone, that kind of thing.

8 Q. Have you always been in favor of the death  
9 penalty as a law since you were an adult?

10 A. Yes, I have.

11 Q. Okay. In Texas there are only certain types  
12 of cases which are eligible for the death penalty. There  
13 are murder cases plus something else, some other aggravating  
14 fact, such as murder that occurs during the course of a  
15 felony.

16 A. Correct.

17 Q. During a robbery, burglary, arson, or rape.  
18 Also murder of a police officer or fireman or prison guard  
19 on duty, murder of a child under the age of six.

20 A. Correct.

21 Q. Murder for hire, someone does it for money,  
22 and murder of more than one victim. Those are the specific  
23 types of cases that have been reserved for the death  
24 penalty.

25 Let me go over another area with you.

1 When we talk about the death penalty, we usually think of  
2 examples involving the actual triggerman. But capital  
3 murder, like any other law, has situations where more than  
4 one person may be involved. An accomplice is the word we  
5 use. We call them parties to an offense.

6 An example would be if Mr. Wirsky and I  
7 and another individual decided to go rob a bank and our plan  
8 was for me to take in the guns to threaten the tellers.  
9 Mr. Wirsky would go in with a bag and he would gather the  
10 money up while I held guns on the tellers, where our third  
11 accomplice stayed outside where the -- with the car running  
12 and honk the horn if the police were coming and speed off  
13 with us.

14 During the course of that robbery, if I  
15 started shooting the tellers, maybe they were going for an  
16 alarm or I didn't like them or got mad or whatever reason.  
17 We were all able to get away and then arrested later. I,  
18 obviously, could be prosecuted for the death penalty because  
19 I'm the triggerman. But under the law Mr. Wirsky and the  
20 getaway driver could also be prosecuted under certain facts,  
21 if they were actively participating in the crime as  
22 accomplices, even though they weren't the triggerman. In  
23 fact, they could be convicted of capital murder and could  
24 ultimately receive the death penalty, depending on the facts  
25 under the law, depending on particular facts, if they are



1 the nontriggermen.

2 But people feel differently about that  
3 and we want to explore that in great detail because a lot of  
4 people are fine with the death penalty applying to a  
5 triggerman, but not an accomplice. They may as far as  
6 someone's role as an accomplice and that type thing, they  
7 may have a very stiff prison sentence, but they don't feel  
8 the death penalty is a justified type sentence. They  
9 disagree with that aspect. Or if it were up to them they  
10 would hand them a different type punishment than the death  
11 penalty.

12 Other people agree with the law and think  
13 those type people should be prosecuted for the death  
14 penalty.

15 I want to know how you feel generally  
16 about the law as far as how the death penalty applies to an  
17 accomplice, a nonshooter, a nontriggerman.

18 A. I'm not real sure how I feel about it. I  
19 don't -- of course, definitely the triggerman.

20 Q. You have no problem with that aspect?

21 A. No. The driver, if he's aware that guns are  
22 going in there and there's a possibility, then I would have  
23 to look at him, you know, at all of them. If the guns were  
24 taken in without his knowledge, then that might be something  
25 different.

1 Q. Okay. So you feel that you could prosecute  
2 someone for the death penalty if they are the nontriggerman  
3 and ultimately give them the death penalty under the proper  
4 facts?

5 A. If they were strongly involved, yes.

6 Q. Okay. You said when we asked you on the  
7 questionnaire, and I think you have a copy of it there, on  
8 page 4 we ask one question towards the bottom, I think the  
9 second last to the bottom. What would be important to you  
10 in deciding whether a person received a death or life  
11 sentence in a capital murder case? And you said hard  
12 evidence, not hearsay.

13 A. Correct.

14 Q. What did you mean by that exactly?

15 A. Hard evidence that you could actually prove  
16 that they were there, you know, not just somebody talking  
17 about, saying, well, I know he was there or -- it would be  
18 someone would have to have seen him there, proven in some  
19 way other than just people talking about.

20 Q. I want to ask you on page 5, the next page, we  
21 asked a series of questions and make some statements and ask  
22 if you strongly agree all the way down to strongly disagree.  
23 In the middle we put uncertain.

24 And the first statement was, most  
25 criminals are actually victims of society's problems and you

1 put uncertain on that. I wanted to follow up on that. What  
2 were you thinking there, if you recall?

3 A. I believe that society plays a role in a  
4 person's conscience, maybe, and their rearing. But I also  
5 believe that once a person reaches the age of accountability  
6 and has dealt with the public and society, he learns what's  
7 right and what's wrong and by that time he should be able to  
8 adhere to those laws or to society's rules, I guess you  
9 would say.

10 And that's -- but I do know that your  
11 upbringing can have some problems for you.

12 Q. And on prosecutors just above that you put  
13 underpaid sometimes, but sometimes not thorough in  
14 preparedness.

15 A. Preparedness.

16 Q. Was there a specific example you know of or a  
17 case you followed or have known of?

18 A. Yes. I think this was basically from a friend  
19 of mine whose son actually was brought up on some charges  
20 and the -- it was a court appointed and it seems like they  
21 didn't really get all the facts. They didn't take the time  
22 to get all the facts. And his court-appointed attorney  
23 didn't seem to spend enough time preparing for the, you  
24 know, trial.

25 Q. What kind of case was that?

1 A. Robbery.

2 Q. Was that here in Dallas?

3 A. No.

4 Q. So the prosecutor didn't seem to get all the  
5 facts and then you also had some problems with the  
6 court-appointed lawyer, also?

7 A. Right.

8 Q. What happened in that trial?

9 A. He got sentenced -- he went to jail.

10 Q. Do you think he was treated fairly or do you  
11 think they could have gone through the process a little more  
12 thoroughly in your mind from what you knew about it?

13 A. Um, you know, I wasn't there during the trial,  
14 so I --

15 Q. Just getting your information?

16 A. Yeah. So much of mine would be secondhand, so  
17 I would hate to make a judgment on it.

18 Q. You also had a friend from the Houston area  
19 that had a criminal case. You put down friend that I  
20 believe was charged and convicted of rape; is that right?

21 A. Where are you reading from?

22 Q. On page 6.

23 A. Correct.

24 Q. Tell us a little bit more about those details.  
25 How long ago did that happen?

1 A. Oh, many, many years ago, that was probably 25  
2 years ago.

3 Q. What relationship were you to this person?

4 A. Just knew him through the church.

5 Q. Did you know much about the facts of his case?

6 A. No.

7 Q. Or what happened down there?

8 A. Only from talking to his mother, no.

9 Q. Have you kept in touch with him after he was

10 --

11 A. When he was discharged, yes, I stayed in touch  
12 with him for a while. He came out of prison and he seemed  
13 like he was a decent young man. I don't know. I find it  
14 hard to say that anyone that commits rape is a decent  
15 person, but --

16 Q. Did he talk to you much about his prison  
17 experience?

18 A. You know, he really didn't. Maybe he just  
19 didn't want to dwell on it.

20 Q. Okay.

21 MR. SHOOK: May we have one moment,  
22 Judge?

23 THE COURT: You may.

24 (Bench conference)

25 MR. SHOOK: That's all the questions that

1 I have, Ms. Freeland.

2 THE COURT: No questions?

3 MS. BUSBEE: No, Your Honor.

4 THE COURT: Ms. Freeland, we want to  
5 thank you for your honesty and coming down and spending time  
6 with us and filling out the questionnaire. The parties have  
7 agreed to excuse you from your jury service. You are free  
8 to go. Thank you.

9 PROSPECTIVE JUROR: Thank you.

10 [Prospective juror out]

11 THE COURT: Ms. Krupihnski.

12 [Prospective juror in]

13 THE COURT: Good afternoon.

14 PROSPECTIVE JUROR: How are you?

15 THE COURT: I'm doing fine. We've been  
16 playing name that tune on how we pronounce your name. Is it  
17 Krupihnski?

18 PROSPECTIVE JUROR: Very good.

19 THE COURT: Close enough?

20 PROSPECTIVE JUROR: Uh-huh.

21 THE COURT: Please have a seat. Have you  
22 had enough time to preview the guide that I provided for  
23 you?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: And a copy of the

1 questionnaire that you filled out for us Friday back in May?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: A short questionnaire, what  
4 is your name, where were you born, and what happened next?  
5 So we don't anticipate that you remembered all the answers  
6 to the questions provided so if you need to refer to that,  
7 please do.

8 This could be an intimidating process.  
9 It's not designed to be. It's as informal as best we can.  
10 We don't want you to feel like you are the one on trial. My  
11 job is to be sure that you understand the law. I've given  
12 you as short a version as I can of the issues that the  
13 lawyers will be talking about and they will give you  
14 examples. If you don't understand the examples, we'll  
15 explain it so that you can understand how all the law  
16 relates with each other. That's the main thing, to get you  
17 up to speed on the type of law we're dealing with. Number  
18 one, do you understand it? Number two, can you follow the  
19 law?

20 So before we go any further, after  
21 reviewing the guide, do you have any questions about what  
22 you have read so far?

23 PROSPECTIVE JUROR: No.

24 THE COURT: All right. Do you have any  
25 problems serving the Court for two weeks of jury duty

1 beginning on November 10th?

2 PROSPECTIVE JUROR: No, I sure do not.

3 THE COURT: Very well. I shall turn it  
4 over to Mr. Shook.

5 SUSANNE KRUPIHNSKI,  
6 having been duly sworn, was examined and testified as  
7 follows:

8 DIRECT EXAMINATION

9 BY MR. SHOOK:

10 Q. Krupihnski, that is right?

11 A. Yes.

12 Q. My name is Toby Shook. I'm going to speak to  
13 you on behalf of the State. Looking at your questionnaire,  
14 I believe this is your first tour of jury duty; is that  
15 right?

16 A. Yes. Here in Texas or ever.

17 Q. Okay. So you went right up to the --

18 A. Uh-huh.

19 Q. You skipped the minor leagues and went to the  
20 major leagues?

21 A. Yes.

22 Q. Usually in every other case, except the death  
23 penalty case, we talk to jurors in general. But because it  
24 is a case in which the State is seeking the death penalty,  
25 we do this individual process. And it's, as the Judge



1 alluded, it's not made to intimidate you, although it kind  
2 of makes you feel like you are on trial. We've had jurors  
3 tell us that. But it's the best way we found to get  
4 information.

5 You provided a lot of information with  
6 your questionnaire and I'm going to follow up on some of  
7 that.

8 A. Okay.

9 Q. We're going to talk about how you feel about  
10 the capital murder death penalty and some of the rules and  
11 laws that apply to that and all criminal cases. You have  
12 lived, I think, here in the Dallas area for about the last  
13 three years?

14 A. Yeah, it's four years this month.

15 Q. Okay. And prior to that it was Florida?

16 A. Orlando, uh-huh.

17 Q. Let me ask you first about how you feel about  
18 the death penalty, and I believe you put on the  
19 questionnaire that you are in favor of it as a law. And I  
20 would like you to kind of follow up on that, give us a  
21 little information as to why you favor the death penalty and  
22 the purpose you feel it serves society. It doesn't have to  
23 be a long answer, just general feelings.

24 A. I just don't believe in murdering other people  
25 and I think if you do that, you pay the ultimate price with

1 your own life.

2 Q. So you feel it's the proper punishment in  
3 certain types of murder cases?

4 A. Yes, I do.

5 Q. Would that all just come down to the  
6 particular facts of the case, the type of murder, that sort  
7 of thing?

8 A. Yes.

9 Q. Okay. If it's intentional?

10 A. Yes.

11 Q. Okay. If it's -- and I take it it's a law  
12 that you have kind of grown up with or always believed in  
13 it?

14 A. Yes.

15 Q. Okay. In Texas -- every state is a little  
16 different. In Texas the death penalty is just reserved for  
17 murder cases, but not every murder case, just certain types  
18 of murder cases. When we talk about murder, we are talking  
19 about an intentional killing. But there's lots of different  
20 types of intentional killings, brutal killings, you can't  
21 get the death penalty for. You can get a life sentence or  
22 99 years, but not the death penalty. There are certain  
23 rules that we have to go by which the Supreme Court has  
24 handed down. Kind of limits us to which type case that we  
25 can go for.

1 We had to put some criteria on the death  
2 penalty, so what we're limited to right now is intentional  
3 killings that occur during the course of a felony such as a  
4 robbery. Someone goes in and robs a 7-Eleven, killing the  
5 clerk, that could be a death penalty case. During a  
6 burglary, during a rape, during an arson, those, or  
7 kidnapping. Those could be a death penalty case, again,  
8 depending on the facts makes you eligible for the death  
9 penalty.

10 I guess you could say murder of specific  
11 victims, such as a police officer, fireman on duty, child  
12 under the age of six, multiple murders, several victims,  
13 mass killer or serial killer. And then a murder for hire,  
14 hitman-type situation.

15 But those are simply the types of cases  
16 that have been reserved for the death penalty. Lots of  
17 other bad killings deserve the death penalty, but going  
18 under the rules handed down from the Supreme Court, that's  
19 what Texas is limited to.

20 Then if you committed that type of crime  
21 under our procedure, that doesn't mean I get the death  
22 penalty. It depends on the facts of each case and the  
23 Special Issues which I believe you looked over from that --

24 A. Uh-huh.

25 Q. -- the juror orientation. Those have to be

1 answered a certain way before someone can get the death  
2 penalty. Some are answered that way and some aren't,  
3 depending on each case. It comes down to each particular  
4 case.

5 The way the death penalty is set up right  
6 now for the types of murders I've gone over where a person  
7 could be eligible for the death penalty, do you agree  
8 generally that those are the types of crimes --

9 A. Yes.

10 Q. -- that you think should be considered? Okay.  
11 Here's another area I want to get into, what is called the  
12 law of parties. I think it's more commonly known as  
13 accomplices. You know, when we think of a death penalty  
14 case, someone committing capital murder, you immediately  
15 envision the actual triggerman and very well may be that.

16 But also capital murder, like any other  
17 crime, can be committed by more than one person, groups of  
18 people. Sometimes it takes several people to pull off a  
19 certain crime. Some people are more responsible or have a  
20 larger role in a crime but that doesn't mean the rest aren't  
21 held responsible, if the law says we actively participate in  
22 the crime, participate, then we can all be held accountable.

23 Let me give you an example of capital  
24 murder. let's say Mr. Wirsbye and I and one other person  
25 would be the getaway driver. We come up with a plan to rob

1 a bank. The plan calls for me to have a couple of guns. We  
2 get driven to the bank. Our getaway driver waits outside,  
3 car running, so we can make a speedy getaway.

4 Mr. Wirskye and I go in and I pull the  
5 guns out and threaten everyone and he gets a bag and starts  
6 loading the money up. During the course of that robbery, I  
7 start shooting people. Maybe Mr. Wirskye warns me, hey,  
8 this one is going for an alarm or that one is trying to get  
9 away and I shoot them. Or maybe I start shooting on my own,  
10 but I kill people intentionally, kill a person  
11 intentionally. We get away, but we're caught.

12 Obviously, I can be prosecuted for the  
13 death penalty because I'm the triggerman. But the law says  
14 that Mr. Wirskye and the getaway driver, depending on the  
15 facts of the case, could also be found guilty of capital  
16 murder, even though they are not the triggerman. They can  
17 be prosecuted because they actively participated in that  
18 crime and they ultimately could get the death penalty.  
19 Depends on the particular facts of each case, even though  
20 they didn't pull the trigger.

21 Some people don't agree with that area of  
22 the law. They would draw a line there and go, look, I'm all  
23 for the death penalty for the triggerman, but not an  
24 accomplice. Other people tell us, no, I can see where a  
25 death penalty could apply in that situation and it would

1 depend on the facts, obviously, how actively people are  
2 involved in the crime. But I can see the logic of pursuing  
3 the capital murder, even the death penalty, against a  
4 nontriggerman and accomplice. And they agree with the law.

5 And we just want to know how you feel,  
6 generally, about that, prosecuting someone who is a  
7 nontriggerman, that is an accomplice to a crime for the  
8 death penalty. Personally, do you feel that is something  
9 you are on board with, depending on the facts or something  
10 you are not on board with?

11 A. I would probably be one of the people that  
12 would be on the other side that have the opinion.

13 Q. Okay.

14 A. You know, the accomplice may not have  
15 understood what the intention was of the person who shot  
16 them.

17 Q. Okay. So you're fine with the death penalty  
18 for the triggerman. It's the accomplice is where you would  
19 draw the line?

20 A. Yes.

21 Q. Well, let me explore that a little bit further  
22 with you. Is that something if -- and I can't get into the  
23 specific facts, but if you were in a situation where the  
24 State were presenting a case with an accomplice, that you  
25 would have an objection saying, look, life sentence, fine,

1 99 years, but no death penalty for the accomplice. If we're  
2 talking about the triggerman, it's a whole 'nother matter?

3 A. Right.

4 Q. But the accomplice from the get-go, I'm not on  
5 board with that. I'm not saying he would get away.

6 A. Right.

7 Q. Long prison term maybe, but that's not what I  
8 could reserve the death penalty for and I'm being up front.

9 A. Right, just my own personal feelings.

10 Q. And that's how you feel?

11 A. Uh-huh.

12 Q. Do you feel that's something you are pretty  
13 firm about in your convictions?

14 A. Yes, sir.

15 Q. You are telling us honestly, then, if this  
16 were a case -- I can't get into the facts, but I can tell  
17 you we are pursuing this case under the law of parties as an  
18 accomplice, not a triggerman. That's where you personally  
19 would draw the line?

20 A. Yes.

21 Q. And wouldn't be able to return a verdict of  
22 the death penalty, if we're talking about a situation of an  
23 accomplice, a nontriggerman?

24 A. I guess if it were clear to me that the  
25 intention was understood, that a murder was going to take

1 place, it will be different.

2 Q. Well, like the situation I gave, maybe the  
3 example I have given, I mean, I just start shooting. Now, I  
4 don't know if there's any plan ahead of that, but I don't  
5 know how you feel about those fact situations.

6 A. No, I would have difficulty with that.

7 Q. Okay. So you would require some agreement to  
8 murder ahead of time?

9 A. Uh-huh, yes, sir.

10 Q. The accomplice would have to know someone is  
11 going to go in there and be killed even before the crime  
12 began?

13 A. Yes.

14 MR. SHOOK: Judge, I believe we have an  
15 agreement.

16 THE COURT: Ms. Krupihnski, we appreciate  
17 your honesty, by your answers, obviously, to his questions,  
18 the type of law here. I said, you understand the law? Now  
19 you do. And can you follow the law? And you say, no, I  
20 can't go there. So the parties have agreed to excuse you.  
21 We appreciate your time and service here today.

22 PROSPECTIVE JUROR: Thank you.

23 [Prospective juror out]

24 THE COURT: Ms. Garrett.

25 [Prospective juror in]



1 THE COURT: You may have a seat. Ms.  
2 Dona Michelle Garrett?

3 PROSPECTIVE JUROR: Uh-huh.

4 THE COURT: Ms. Garrett, you go by your  
5 first name Dona or Michelle or Michelle?

6 PROSPECTIVE JUROR: Dona.

7 THE COURT: Okay. D-O-N-A, not  
8 D-O-N-N-A?

9 PROSPECTIVE JUROR: That's correct.

10 THE COURT: Making sure my records are  
11 correct. I know it's kind of tough to say relax a little  
12 bit. This is as informal as it gets. Many people come in  
13 under a lot of stress and feel like they are the ones on  
14 trial. That's not the case.

15 We're trying to explore the law with you,  
16 given you a guide to begin to try to think about the issues  
17 we're going to talk about. I know that is -- that's a lot  
18 of law to read it and understand it the first time. We  
19 don't expect you to. We want you to begin to think about it  
20 and the lawyers will explore these issues with you.

21 If you have questions, please ask us.  
22 The whole idea is for you to understand the law, number one.  
23 Number two, can you follow the law? That's the ultimate  
24 issue here. You understand the law and can you follow the  
25 law? That will be the last question we ask.

1 Do you have any questions of me regarding  
2 the issues I've presented to you in the guide before we  
3 begin?

4 PROSPECTIVE JUROR: No, sir.

5 THE COURT: Are you able to serve this  
6 court for two weeks beginning on November 10th?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: Mr. Wirskye?

9 DONA GARRETT,  
10 having been duly sworn, was examined and testified as  
11 follows:

12 DIRECT EXAMINATION

13 BY MR. WIRSKYE:

14 Q. Ms. Garrett, how are you this afternoon?

15 A. I'm fine. How are you?

16 Q. Good. My name is Bill Wirskye and I'm the  
17 assistant DA that will be visiting with you the next couple  
18 of minutes, trying to -- sometimes you feel like you are on  
19 trial, but you are not. I want to visit with you a little  
20 bit, get some of your thoughts and feelings about the death  
21 penalty, talk a little bit about some of the information in  
22 your questionnaire, and then maybe talk about some of the  
23 law and rules that apply to death penalty cases.

24 If you have any questions at all, just  
25 stop me. And we know people usually don't sit around

1 thinking about these things and we're giving you booklets  
2 like a test in school. If there's something you don't  
3 understand or something I don't make clear, please stop me  
4 because it's probably my fault and not yours.

5 You have told us you are generally in  
6 favor of the death penalty; is that correct?

7 A. Yes, sir.

8 Q. Why is that? What purpose do you think it  
9 serves in our society?

10 A. Okay. I'll -- I think a lot has to do with  
11 the way I was raised from the south. I was raised in a very  
12 religious family, Biblical and moral standards, and for me,  
13 I mean, I believe in giving people a chance through the  
14 system or if they are -- rehabilitation. But there are  
15 extenuating circumstances, repetitive crime and behavior,  
16 extreme violent acts, violent acts against children or the  
17 elderly or disabled, to me are unconscionable and for that  
18 reason there has to be limitations placed on individuals.

19 We need to learn to be responsible for  
20 our actions. We know what the consequences are in advance.  
21 I know -- I think most people know whatever state they're  
22 living in what these laws are and what the repercussions of  
23 their actions are. And then I think that we have to hold  
24 them accountable. Unfortunately, if there is no  
25 accountability and responsibility, then I think society

1 which is -- would, basically, be unruly. I mean, there  
2 would be no one -- no parameters for anyone.

3 And as a parent with children, parameters  
4 are very important. Accountability is responsibility and  
5 responsibility is important in raising them to be able to  
6 conduct themselves in society.

7 Q. Okay. You have told us some of the types of  
8 cases you think it may be appropriate. Is there any  
9 particular case or cases that come to mind? I know you made  
10 mention of a couple, I think, in your questionnaire. I  
11 think the Susan Smith case and Darlie Routier case?

12 A. I think maybe not even being a parent, seeing  
13 a violent act committed against a defenseless child or  
14 disabled or mentally incapable, someone who is physically or  
15 mentally unable to defend themselves, again, is  
16 unconscionable. These are people that can't protect  
17 themselves from you as an adult or you as a parent.

18 So for me those are extreme cases that  
19 definitely the death penalty is warranted if proved beyond a  
20 reasonable doubt.

21 Q. Would you kind of reserve the death penalty  
22 for just those types of extreme cases or --

23 A. No. Again, as I said earlier, anyone that is  
24 repetitively committing criminal acts and violent acts  
25 deserves to be punished.

1 Q. Okay. How long have you lived in Texas?

2 A. I moved here the end of October, actually  
3 October 31, 1995.

4 Q. Okay. From South Carolina?

5 A. Uh-huh.

6 Q. And looks like your brother is a police  
7 officer in South Carolina?

8 A. Yes.

9 Q. As you may know by now, the allegations in  
10 this case involve the murder of a police officer on duty,  
11 which just to back up a second, capital murder in Texas is  
12 only reserved for certain types of murder cases. Not all  
13 murder cases can be subject to the death penalty. You kill  
14 a certain person, a police officer, fireman, prison guard on  
15 duty, mass murder, serial murder, or commit an intentional  
16 murder during the course of another felony like robbery or  
17 burglary, those are the type cases that in Texas we reserve  
18 for the death penalty.

19 Obviously, in this case we have alleged a  
20 police officer was murdered. What effect do you think it  
21 may have on you having a brother who is a police officer in  
22 this type of case?

23 A. Um, it's kind of difficult. I'm learning to  
24 be a sister of a police officer. My brother joined the  
25 force late in life. It had been his lifetime goal to become

1 a police officer and I guess it took some time for him to  
2 convince his wife and his family that it was okay. So he's  
3 actually only been on the force for about a year and a half.  
4 He turned forty and made a huge career change.

5 You know, it's a sensitive subject for  
6 anyone, be they sister, mother, daughter, to lose anyone,  
7 regardless of what capacity they're serving their country,  
8 their state, their job, their family. Whatever their  
9 lifestyle is, whatever their job position, I would think it  
10 would be very difficult to lose an immediate family member  
11 to a violent crime and not have it affect you.

12 I tend to weigh the evidence -- I mean,  
13 I'm a believer, for whatever it's worth, I weigh the scales.  
14 I try to balance things out. I don't think it would impair  
15 my being able to -- if you are asking whether it would  
16 impair my being able to make a decision or color or slant me  
17 being able to make a decision, I don't think so.

18 Q. You know, you said you were learning how to be  
19 a police officer's sister. That's what I want to follow up  
20 on. We're not all the right type jurors in a case. Only  
21 you know in your heart. And, obviously, the law in this  
22 case requires the jury to decide it just on the facts and  
23 evidence presented in the Court.

24 A. Right. Emotions have to be out of it.

25 Q. And you know yourself better than anyone. You

1 think that you can do that?

2 A. I think I can.

3 Q. If I had to pin you down for a yes or no,  
4 where do you think you -- if you had to choose yes or no?

5 A. Based on who I am and how I live my life, yes,  
6 I know -- I think I could -- I know I could.

7 Q. You can keep that out of your mind?

8 A. I could keep that out of my mind and focus on  
9 the facts.

10 Q. Okay. Fair enough. Let me ask you this. You  
11 told us you were in favor of the death penalty. I think  
12 oftentimes when we talk about a death penalty case, we think  
13 of one criminal acting alone, one murderer in the real  
14 world. There are often groups or gangs of people that  
15 commit crimes, even murder. So you may only have a  
16 situation where you just have one person that actually  
17 pulled the trigger, one person that actually caused the  
18 death.

19 And we talk to a lot of people who are in  
20 favor of the death penalty, but for the person that actually  
21 committed the death, the person that actually pulled the  
22 trigger, and they tend to draw a line sometimes and they  
23 don't think the death penalty is necessarily appropriate or  
24 ever appropriate for a person that didn't take a life, for  
25 the accomplice, for lack of a better word. Am I being

1 clear?

2 A. Uh-huh.

3 Q. So I'm just kind of curious where you come  
4 down. We talk to a lot of people who think the death  
5 penalty is only warranted for someone who has taken a life.  
6 And some people, you know, could consider it for an  
7 accomplice, someone who didn't pull the trigger. And I'm  
8 wondering where you come down on that issue.

9 A. I'm probably one of those that would be more  
10 than actually taking a life or participating in the act. I  
11 don't think for me it would be one of those situations  
12 where, okay, we can prove from his gun that it wasn't the  
13 actual bullet that killed him, that that would be an issue  
14 for me. The fact that the person acted by actually shooting  
15 with the intent to harm or cause death would be enough for  
16 me to lean towards the death penalty. But if they did not  
17 actually participate, again, it would depend on the facts  
18 and the situation and the evidence.

19 Q. Let me give you a hypothetical.

20 A. Okay.

21 Q. Say Mr. Shook and I decided to rob a bank. We  
22 only have one gun. He carries the gun in to hold up the  
23 teller. I'm going to go in with the bag and grab the money.  
24 And for some reason, just out of pure meanness or somebody  
25 is going for a silent alarm, and I tell Mr. Shook that, he



1 shoots and kills the teller. Okay? He's committed  
2 intentional murder during the course of robbery. He could  
3 be found guilty of capital murder, depending on the facts  
4 and circumstances. He could get the death penalty. What do  
5 you think about my situation?

6 A. I'm trying to figure out if they participated.  
7 I don't think so. I don't think that you are qualified for  
8 the death penalty, if it were up to me, because you did not  
9 have a weapon. It was not your intention to do anything,  
10 other than rob the bank.

11 Q. Okay.

12 A. Did I answer you?

13 Q. There's no right or wrong answers. We're just  
14 trying --

15 A. That's my impression. The person that takes  
16 the gun and wields the gun and is capable and does use  
17 violent measures against another innocent person, I mean, I  
18 think you have put yourself in the wrong crowd, of course,  
19 and you have put yourself in a situation to be involved with  
20 someone. Obviously, he took a gun. He was going to use it,  
21 if necessary. He made a decision that he could and would  
22 cross the line. You made a decision not to have a gun. You  
23 are still committing an act of crime, but he's the one that  
24 actually fired the shot that killed someone, so I would not  
25 -- I would not personally see that you need to face the

1 death penalty.

2 Q. Okay. You could give me a long prison  
3 sentence?

4 A. Yes.

5 Q. Life in prison, but not the death penalty.  
6 What if I had a gun? Didn't shoot, he still shot, but I had  
7 a gun, too?

8 A. Well, did you call the police and turn him in?

9 Q. No.

10 A. Okay. I still think that the person that  
11 actually perpetuated the crime, the offense, the one that  
12 actually murdered the individual, is the one that should  
13 face the death penalty. There's severe consequences for the  
14 other person, but if they did not fire or shoot, then, no,  
15 they should not.

16 Q. What our law allows, basically, in the  
17 situation I gave, Mr. Shook and I entered into a conspiracy  
18 to commit bank robbery. Mr. Shook committed the murder in  
19 furtherance of the bank robbery. And even though I had no  
20 intention at all of that murder happening, I could still be  
21 on the hook for capital murder and in Texas I could still  
22 face the death penalty.

23 And there are some people, very frankly,  
24 that disagree with that and that's fine. And that kind of  
25 sounds like where you are coming down. The person that does

1 not have the intent, he's just an accomplice, just signed up  
2 for a bank robbery, didn't sign on for capital murder,  
3 sounds like you take the death penalty off the table for  
4 that kind of person, right?

5 A. Well, if it's the state law, then you have to  
6 look at the law. I'm just saying me personally. But,  
7 again, this is going to tell us how we have to come to a  
8 verdict.

9 Q. I'm just trying to get how you really feel.  
10 For both sides there's no right or wrong answers. The law  
11 allows that, but we don't want to put anyone in a hard spot  
12 or jam somebody up against their conscience or morals or  
13 beliefs --

14 A. Correct.

15 Q. -- or that type of thing. The law may allow  
16 it, but we don't want to have you over in the jury box and  
17 have a crisis of conscience. We don't want to do that to  
18 anyone.

19 And we'll be up front with you. This is  
20 a case that we're prosecuting as a nontriggerman under the  
21 law of parties or the law of accomplice or conspiracy. And  
22 it sounds like maybe this, with everything going on, with  
23 maybe your brother being in law enforcement, and then the  
24 accomplice business, maybe you are probably not the right  
25 juror for this case. Is that fair to say?

1 A. Probably.

2 MR. WIRSKYE: Give us just a minute.

3 THE COURT: Ms. Garrett, we appreciate  
4 your honesty and coming down and going through the process.  
5 You probably learned more about it then you ever dreamed.  
6 So the parties have agreed to excuse you, because two  
7 questions I said, do you understand the law, number one, and  
8 number two, can you follow it?

9 The bottom line is in this case you  
10 indicated that you probably couldn't. So with that, we'll  
11 excuse you.

12 [End of Volume]

1 STATE OF TEXAS \*

2 COUNTY OF DALLAS \*

3 I, NANCY BREWER, Official Court Reporter for the 283rd  
4 Judicial District Court, do hereby certify that the above  
5 and foregoing constitutes a true and correct transcription  
6 of all portions of evidence and other proceedings requested  
7 in writing by counsel for the parties to be included in this  
8 volume of the Reporter's Record, in the above-styled and  
9 numbered cause, all of which occurred in open court or in  
10 chambers and were reported by me.

11 WITNESS MY OFFICIAL HAND on this the 4 day of

12 March, 2003.

13  
14  
15 Nancy Brewer  
16 NANCY BREWER, CSR, NO. 5759  
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